TRAINING FOR CITIZENSHIP

JOSEPH · WARREN · SMITH

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TRAINING

FOR

CITIZENSHIP

AN ELEMENTARY TREATISE
ON THE RIGHTS AND DUTIES OF CITIZENS

BASED ON
THE RELATIONS WHICH EXIST BETWEEN ORGANIZED SOCIETY AND ITS INDIVIDUAL MEMBERS, AND BETWEEN THE INDIVIDUAL MEMBERS OF ORGANIZED SOCIETY

BY

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Preface

This work upon civics owes its existence to the fact that no one, so far as the author is aware, has attempted to cover the field in a similar way. There are numerous works upon civil government in which the Constitution of the United States has been discussed with great ability; other books have treated the subject from the social standpoint; still others have presented the principles of law; but this is an attempt to combine the essential elements of all these features, and, with an historical background as a setting, to render the relation of one field to another of easy comprehension to the immature mind. If this has been successfully done, the result will be of substantial advantage to the many youth in our schools who are even now upon the very threshold of life.

An examination of the plan will show that considerable prominence has been given to the township and its government, for it is here that the pupil has the best opportunity to observe the workings of the governmental machine in its simplest form. Chapters V, XIX, and XXII are transitional, and are introduced with a view to the imparting of such information as will make the learner at home in his new surroundings; still other chapters par-

take of this nature, but the idea has not been kept so prominent.

During the preparation of the book the author was so fortunate as to spend a number of months in Michigan, California, Arizona, and Florida, and availed himself of the best of opportunities to observe the peculiarities of the local government, and has aimed so to frame his statements as to meet the varying local conditions he has seen. It is confidently believed that with the aid of the Revised Statutes, which may usually be had for school use for the asking, no state edition will be necessary.

The sources from which the materials for this work have been drawn are so diverse that an enumeration will not be attempted. The writer will, however, acknowledge his indebtedness to Hinsdale's "American Government" and to Bryce's "American Commonwealth," both of which should be available for reference. He gratefully acknowledges the assistance his wife has rendered him in offering suggestions and in the preparation of the manuscript. He is also under obligations to Colonel Hawley of Los Angeles for the very neat description of surveying the public lands.

JOSEPH WARREN SMITH.

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I

INDIVIDUAL RIGHTS

"All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness."

— *Constitution of California.*

1. **Selecting a Definition.** — When we wish to know the meaning of a word, our first thought is to consult the dictionary. It would not, however, always be safe for us to accept the first definition we might see; for very likely it would not make good sense in the place we might wish to use it. Even a shade of meaning often makes a great difference.

2. **A Citizen.** — The word "citizen," for example, is used in two senses, — a narrow and a broad. In a narrow sense, a citizen is any person who has the right to vote for a public officer, and may himself hold a public office. In a broad sense, a citizen is any inhabitant of a state who is not an alien.

3. **Classes of Citizens.** — Citizens may be divided into two classes, — native-born and naturalized. Native-born are those who have been citizens from birth. The citizenship of the parent at the birth of the child, as a rule, determines the citizenship of the child. Naturalized

are such as have been given the rights of citizenship. An alien is one who owes allegiance to a foreign government.

4. **Absolute Rights.** — The absolute rights which belong to every citizen are personal liberty, personal security, private property, and religious belief and worship. To secure these rights, certain regulations have been adopted from time to time by society, and every person has agreed, directly or indirectly, to be bound by them. In return for this obedience, society, as a whole, or the state, guarantees protection.

5. **The Police Power.** — The police power is the right which society has to make and enforce laws for the protection of its citizens. This it accomplishes through the agency of civil officers. A good citizen has not done his whole duty when he has merely obeyed the laws. Whenever he sees that they are being violated, or knows them to have been violated, he is bound to take all proper steps to bring the offenders to justice. The officers would never be able to enforce the laws without a strong public sentiment which the citizens must themselves create.

6. **Personal Security.** — By personal security we mean the right which every one has to enjoy his life, his body, his health, and his reputation. No man is permitted to take, wantonly, the life of another, nor to inflict any injury upon him that will cause pain or sickness. If we are ill, we are entitled to medical attendance, and if we are too poor to employ a physician, society will do so for us. Nor must any one be allowed to injure our good name, which is more precious than life itself.

7. Personal Liberty. — Personal liberty consists in our right to go wherever our inclination may direct, without interference from any one. Formerly, even in this country, the people were divided into two classes, — freemen and slaves; but since the Civil War there have been no slaves in America. Every free man has this right of personal liberty; a slave does not.

8. Private Property. — The right of private property (114) consists in the right to use, enjoy, and dispose of any property that one may have, without interference from another. As society is at present organized, this right is a necessity. One cannot be in the full enjoyment of his body or his life, if he does not have the means of protecting his life and of nourishing his body.

9. Religious Belief and Worship. — But the aim of society is not fully accomplished when it secures to every citizen safety, liberty, and property. A free government will also protect him in entertaining and expressing his opinion upon all questions which relate to the public welfare. This is especially true as to religion, which is, and always has been, one of the greatest forces in human affairs. The right of religious belief and worship may be defined as the right which one has to worship God in any manner, or not at all, as he sees fit. For any error he may make the individual is responsible, not to society, but to God himself. No one, however, is permitted, under the cloak of religion, to commit an act which society, by means of public law, has declared to be a crime.

10. Value of Absolute Rights. — These rights are the inheritance of every native-born citizen, and every alien acquires them when he becomes a citizen. We are so

accustomed to their enjoyment that we do not realize their present value; nor that it has cost millions of lives, billions of dollars, and untold suffering to acquire and preserve them. Any one who interferes with our exercise of these rights is a trespasser; and the offence, when accompanied by violence, is a crime. If by our conduct we show ourselves unworthy of these great privileges, they can be taken from us; but this must be done in an orderly manner, and such as is prescribed by the law of the land.

11. **Political Duties.** — The relation which the citizen sustains to the state, and to his fellow-men, impose upon him certain obligations. With reference to the state, these may be classified as political; with reference to his fellow-men, they are social, industrial, legal, and moral. Political duties are such as pertain to the part one should take in administering the government. It is the duty of a good citizen to learn all he can about the nature of the government under which he lives, how its laws are made and enforced, the character of its foreign and domestic policy, its glorious history, and the theories advocated by the great political parties for the shaping of its future destiny. A good citizen will attend the primaries, cast his vote for the best men, and even seek office himself, if the welfare of the community demands it.

12. **Social and Other Duties.** — But if no one did more than merely discharge his political duties, there would be no progress, no improvement, society would be at a standstill, and the character of all our institutions would eventually decline. There are elements in society which to advance their own personal interests will not hesitate to trample on the rights of others. They pass sleepless

nights in inventing ways to evade the laws; they combine their skill and their money to secure enactments which will favor their selfish ends (242); they engage in pursuits which tend to debase humanity. By the faithful discharge of our social, industrial, legal, and moral duties, we may each be instrumental in reforming and elevating these influences.

1. *Social Duties.* — Social duties are such as are concerned with the improvement of humanity. Ignorance, pauperism, and crime are to be found in every community; and the evils which flow from these sources, unless checked, will destroy the very foundations of the government. We ought, then, to give our active assistance to all those agencies which aim to alleviate suffering, banish ignorance, or prevent crime. We should support the churches, favor enterprises which will give employment to labor, assist charitable institutions, and extend a helpful hand to the poor.

2. *Industrial Duties.* — Perhaps the most important duty which we owe to society at large is to support ourselves. The world does not owe us a living; but only an opportunity for earning it. In our youth we should obtain, not only intellectual education, but an industrial one. By the latter term is meant any kind of training which will enable us to make a living for ourselves, and for those who may hereafter be dependent upon us.

3. *Legal Duties.* — We cannot be members of society without sustaining relations to others which are legal in their nature. Such are those of parent and child, master and servant, pupil and teacher, guardian and ward, debtor and creditor. It is our duty to serve on juries, to pay our

taxes, and even to protect our property by a suit at law when occasion requires it.

4. *Moral Duties.* — But religion and morality are also essential to national character. At present reformatories and prisons are as necessary as schoolhouses and churches; and our civil courts spend far more time in rescuing our property from schemes of dishonest men than in settling honest difficulties. All this would be changed if every one would take the Golden Rule for his life's motto, and seek to do right for right's sake.

TOPICAL ANALYSIS

1. The selecting of a definition.
2. A citizen in two senses.
3. Native-born and naturalized citizens.
4. Our absolute rights.
5. The police power.
6. Rights enumerated: —
    (1) Personal security.
    (2) Personal liberty.
    (3) Private property.
    (4) Religious belief and worship.
7. Value of absolute rights.
8. Political duties.
9. Other duties enumerated: —
    (1) Industrial.
    (2) Social.
    (3) Legal.
    (4) Moral.

QUESTIONS AND EXERCISES

1. Commit to memory the first paragraph of the Declaration of Independence.
2. Is it our duty to feed a hungry tramp?
3. How does "due process of law" differ in meaning from "law of the land"?
4. Why is it ever one's duty to protect his property by a suit at law?
5. The principle, "once a subject, always a subject," led to what war?
6. What is duress?
7. Is teaching an industrial pursuit?
8. How does a reformatory differ from a prison?
9. In what does the offence known as "lese majesty" consist?
10. How does a right differ from a duty?

II

PRINCIPLES AND DEFINITIONS

"And sovereign law, the state's collected will,
O'er thrones and globes elate
Sits Empress, assisting good, repressing ill."

13. Law of Conduct. — We often hear it said that this is a free country, and so it is; but this does not mean that every one can do as he pleases. We are each entitled to the enjoyment of our absolute rights; but we must be careful so to regulate our conduct as not to interfere with another's right to the same privilege. It is not likely that we should always be able to do this, if it were not for certain regulations which society has adopted for the guidance of its members. This principle lies at the foundation of the police power (5).

14. Law Defined. — A law may be defined as a rule of conduct, prescribed by a superior, and which an inferior is bound to obey. The four things to be considered in this definition are the superior, the inferior, the expression of the will of the superior, and the necessity for obedience.

15. Natural Law. — Place a feather and a bullet in a glass tube from which the air has been exhausted; now invert the tube, and the feather and the bullet will be seen to reach the bottom at the same instant. This is an illustration of the law of falling bodies. Here the superior is

the Creator, the inferior is the feather and the bullet, the force of gravity is the law, and the obedience of the inferior cannot be avoided.

16. **Law of Property.** — We all know that we must not take and carry away any of our neighbor's property without his knowledge and consent. The law which forbids this was established by society for the protection of one of our absolute rights. This is a reasonable regulation, for unless we obey it, private property cannot exist.

17. **Different Sciences.** — A little thought will show you that these laws differ very materially in their nature. They represent two classes, one of which pertains to things, the other to human actions. The one class forms the basis of the so-called physical sciences; the other, of the political sciences, among which is civil government.

18. **Definitions.** — Civil government is that branch of political science which treats of the political rights and duties of the citizen (11). The word "civil" means relating to the citizen; and the science of civil government deals with the relation of the citizen to the state (4). Political economy is that branch of political science which treats of the production and distribution of wealth. The former deals with the essential functions of government, as the keeping of the peace and the administration of justice in civil causes; the latter, with the non-essential functions, as the regulation of trade and industry. The rights which the second political science seeks to advance are called economic, because they pertain to the comfort of the nation considered as one family.

19. **Origin of Government.** — There are three theories as to the origin of government, two of which assert that

the Creator is the source of all power. The first maintains that He has conferred the right to rule upon one person, who, therefore, is the supreme ruler by divine appointment. Such was the theory of the Stuart kings of England, and is now in all those states where the Mohammedan religion prevails. The second theory holds that the Creator gave to all the people who compose the nation the right to choose their own rulers. The third theory is that of the social compact (*222*). It holds that at our birth we entered into an implied contract (161) to obey the rules of organized society in return for the advantages which it affords.

20. **Forms of Government.** — The form of a government depends upon the character of its law-making power; and it often happens, as in the case of Greece, that the history of one nation will illustrate several forms. A despotism is where one person carries everything by his own will and caprice, without law and without rule. In an absolute monarchy the chief ruler governs according to the forms of law, but his power to change the laws is unrestricted. An oligarchy is where the chief power is in the hands of the few. An aristocracy is where the government is administered by the "best people," or in other words by the nobles. Its principle is that "not to the common crowd, but to the select, belongs the preference in government." A pure democracy (80) is where the laws are made by all the people. A democracy has been defined as "a state where everything begins and ends with the people." A representative democracy, or a republic, is where the laws are made by representatives elected by the people. The principle of a democracy is equal rights for all citizens.

21. **The Three Departments.** — If you will examine the book, or books, in which are published the laws by which this state is governed, you will observe that they are very numerous, and that they are upon a great many different subjects. Some of them are very simple, and others are apparently very complex; but whether simple or complex, none of them were made by any one man, but by a body of men especially chosen for that purpose. This body of men forms the legislative department, or, as it is generally called, the legislature.

But after a law has been enacted, some one must set it in motion when occasion requires. For example, the tax law contains carefully drawn directions as to how the taxes shall be assessed and collected; but if the assessor never makes out his roll, and the treasurer never calls upon us to pay, the public treasury will never receive anything from this source. Those officers whose duty it is to enforce the laws form the executive department. They are also very properly called administrative officers (271).

It sometimes happens that the provisions of a law are not clearly expressed, and an executive officer will think it means one thing, while the one against whom he is attempting to enforce it will give it a meaning more favorable to his interests. In such a case the officer will insist upon the enforcement of the law according to his understanding of it, and the other must submit for the time; but afterwards he can appeal to another man, or body of men, to say whether he or the officer was correct, and both must abide by the decision. Those men whose duty it is to interpret the law form the judicial department.

22. **Ruler and Subject.** — When we speak of "the government" in a republic, we may refer to the body of rules by which the will of the people is made known. Usually, however, we have in mind the public officers who make, interpret, and execute the laws. We generally speak of these public officers as "our rulers," because they are placed in authority over us. All the rest are regarded as subjects.

23. **A Constitution.** — A constitution in this country is a written instrument in which is expressed the will of the whole people. The state constitutions have, in most instances, been submitted to a direct vote of the electors, and when adopted, have become the supreme law of the state, binding alike upon the highest officer and the humblest citizen. No law passed by the legislature is of any validity if it conflicts with any provision of the constitution. The constitution of England does not consist of a single act, nor was it ever adopted by a direct vote of the electors, but by their representatives in Parliament.

24. **Common Law.** — Common law consists of all those principles, usages, and rules of action, applicable to the protection of person and property, which do not rest for their authority upon the direct and express declaration of the will of the legislature. These laws depend for their validity upon long-continued custom. A good illustration may be found in the widow's right of dower (130). When we speak of the "common law," we refer to the customs which regulated the ordinary affairs of life in all parts of England before the Revolution, and to which our forefathers were accustomed when they came to this country. Local customs are excluded.

25. **Statute Law.** — A statute is a law enacted by the legislature. Many of the statutes are simply formal enactments of what was once permitted or forbidden by the common law. This is particularly true of the criminal code. Larceny was a crime at the common law before it was made so by statute; but this was not so with embezzlement. On the contrary, to import goods without paying the duty is a statutory crime, and was not a crime at the common law.

26. **The Penalty.** — All laws consist of two parts, — a statement of the thing commanded or forbidden, and a penalty for the disobedience. A law without a penalty is simply a recommendation, which no one would obey from any fear of the consequences. This penalty may be loss of property, or of liberty, or of both, or even of life.

All punishment has for its aims the prevention of crime and the reformation of the offender. The old law said "an eye for an eye and a tooth for a tooth"; but this is not the modern spirit. Individual citizens may be animated by the spirit of revenge; but all the people of the state, in whose name the penalty is inflicted, cannot possibly entertain this thought. Experience has shown that the certainty and the promptness with which conviction and punishment follow the commission of crime are far more effective for its prevention than is the severity of the penalty. In some of the states even murder is not a capital offence. Prison discipline is now far milder than formerly; and much more humane in civilized than in barbarous countries. Trade instruction, chapel exercises, entertaining exhibitions, instructive lectures, and the shortening the term of imprisonment for good behavior are among the agencies employed for reformation.

27. Administrative and Jural Laws. — With reference to the ends they seek to accomplish, laws may be classified as administrative and jural. The former are such as relate to the duties of executive officers, to the methods of carrying on the government, and to the providing for the common defence. As to these objects, the state may, within certain limits, adopt any means deemed necessary to secure a strong and efficient administration of public affairs.

Jural legislation has for its object the settling of those controversies which arise between individuals, or between the state and individuals, as to their mutual claims and demands. In this way does the state seek "to establish justice and insure domestic tranquillity." To accomplish these purposes, courts of justice are instituted, and their methods of procedure are prescribed. To prevent controversies from arising, the state has provided business rules for men to follow; as, for example, that certain contracts must be in writing. To settle controversies after they have arisen, certain principles have been recognized, either by the legislature or by the courts: as that the guardian shall be held responsible for any funds that may come into his hands belonging to his ward.

28. Limiting the Powers of Government. — It is universally recognized that no form of government is tolerable which has not the strength to exercise its essential functions (18). Even the despotism of Russia is to be preferred to the lack of control which exists in the republic of Hayti. No government can command the respect of its own subjects, unless it is able to administer justice, pay its obligations, repress domestic disorder, and defend its citizens when abroad. That the public authority shall have suffi-

cient resources and ample power to accomplish this, all good citizens are agreed. But when it comes to non-essential functions, there is a wide difference in opinions, which, however, are capable of classification.

1. *Strict-constructionists.* — Those who advocate the principle of non-interference with any undertaking that can be accomplished by private enterprise, may be called strict-constructionists. Extremists of this class would even deny the right of the government to carry the mails. In the history of our country, the strict-constructionists have always formed a powerful party; and although they have been forced to abandon one position after another, yet they have undoubtedly done great good by preventing the too rapid and dangerous centralization of power.

2. *Loose-constructionists.* — The principle of the loose-constructionists is that the government should exercise its powers "to promote the general welfare" (403). To accomplish this, they favor a protective tariff instead of free trade, for in this way, they say, industries will be started which will give employment to labor. It is in accordance with this theory that public land has been given (64) to build railroads; that steamship companies have been subsidized; and that bounties have been voted to establish sugar factories. In our cities also we have municipal ownership of waterworks, and of electric light plants. Some even advocate state ownership of the telegraph and telephone lines, of the railroads, and the city ownership of the street car lines, on the ground that their use has come to be a public necessity.

3. *Socialists.* — The aim of socialism is to improve the lot of humanity, which it proposes to accomplish by the re-

organization of society. The socialist would have the government own and operate all the factories, the farms, the railroads, and the ships, fix the price of labor, and distribute to every man according to his work. He would leave to the individual only that form of property which does not produce anything. "His war-cry is 'Free land, free tools, free money.'" He is opposed to the present system by which one man lives from the profits of another man's labor; and says that when this is rendered impossible, every man will have enough, and that the evils arising from intemperance, poverty, and crime will disappear.

4. *Communists.* — Communism is a special kind of socialism. Every communist is a socialist; but every socialist is not a communist, for the latter would do away even with private property. Share and share alike, every man according to his *need*, and not in proportion to his *work*, is the principle of the communist. The idea is a very old one. Plato in his "Republic" advocated it, as did also Sir Thomas More in his "Utopia," and the early Christians practised it (Acts, ch. iv. 35). Perhaps the most noted organization of the kind in this country is that of the Shakers in New York. The teachings of the communists are, as a rule, opposed to the home, and are destructive of it.

5. *Anarchists.* — A communist of an extreme type is an anarchist. But the one recognizes the necessity of governmental control; while the other is opposed to any form of government, and would destroy it. When the unnatural pressure is removed, all men, says the anarchist, will instinctively form themselves into self-governing coöperative associations, based upon liberty, equality, fraternity. The communist would bring about his reforms by agitation, by

education, by the ballot. He is an evolutionist. The anarchist of the milder type would also adopt peaceful means; but the extremist would attain his ends by fire, by the sword, by dynamite. Killing, burning, — all means are justifiable. He is a revolutionist.

TOPICAL ANALYSIS

1. Law of conduct.
2. Definition of Law.
3. Law of nature.
4. Law of property.
5. Physical and natural sciences.
6. Definitions of, (*a*) civil government; (*b*) political economy.
7. Origin of government.
8. Different forms of government.
9. The three departments, — legislative, executive, and judicial.
10. Ruler and subject.
11. A constitution.
12. Common law.
13. Statute law.
14. The penalty; purpose of punishment.
15. Administrative laws; jural laws.
16. Limitations. Theories of: —
    - (1) Strict-constructionists.
    - (2) Loose-constructionists.
    - (3) Socialists.
    - (4) Communists.
    - (5) Anarchists.

QUESTIONS AND EXERCISES

1. **Does ignorance of a law justify one in disobeying it?**
2. **In what sense is it true that all men are created equal?**
3. **What government is both an aristocracy and a limited monarchy?**

4. Give two forms of government not mentioned in the text.

5. How does a rule differ from a law?

6. Justify a law offering a reward for the destruction of English sparrows.

7. To what class of theorists does the nihilist belong?

8. What probable effect does lighting the streets of a city have upon crime?

9. What is meant by "Judge Lynch"?

10. How does scientific knowledge differ from any other?

III

THE HOME AND ITS GOVERNMENT

"The strength of a nation, especially of a republican nation, is in the well-ordered homes of the people." — MRS. SIGOURNEY.

29. **Our Home.** — The first form of government with which we come in contact is that of our home. Surrounded by father and mother, and very likely by brothers and sisters, we have never thought of our home except as the place which contains all that is most dear to us. No matter whether it consists of one room, or is a palace, it is the one place which we never leave willingly for any length of time, and to which, when we are absent, we always desire to return.

30. **The Marriage Relation.** — The marriage relation is formed when two persons of opposite sex agree to assume the duties of husband and wife. The law usually requires that a license shall be procured from the county clerk, and that both parties shall be obliged to answer satisfactorily certain questions asked by one who is duly authorized to perform the ceremony. This officer then issues to the newly married couple a certificate, signed by himself and by one or more witnesses. This agreement is sometimes called a contract (140), but differs from an ordinary contract in that neither party has the right to break it, even

with the consent of the other, and the relation can be dissolved only by death, or by the action of a court. The dissolution of a marriage by a court is called a divorce.

31. **The Family.** — The family is a little society, consisting of those united by the ties of marriage and blood-relationship, dwelling under one roof and holding property in common (37). It may be said to be composed of three concentric circles. Within the inner circle are included the father, the mother, and the children. Between the circumferences of the inner and the second circles are to be found the near relatives of the father and the mother. The remaining space is occupied by the guests and the servants. Formerly the position of the servants in the family was much more intimate than it now is, and the relation continued throughout life.

32. **Object of the Family.** — The importance of protecting the family and of preserving the purity of its life cannot be overestimated. "No nation," says Holland, "can be destroyed while it possesses a good home life." A little child is the most helpless of living beings, and if left to itself would soon perish; but, under the fostering care of the parents, it develops into the strong, self-reliant man or woman. The proper nurture of the child in the family is secured both through the love of the parents and the law of the land. The mental, moral, and religious training of the child is also best secured through the family, which is "the school of all virtues."

33. **Form of Government.** — The germ of civil liberty lies in the family. As the family is a little society, and as no society can exist without laws to regulate the conduct of its members, it follows that family government is a neces-

sity. Since the children in early life must depend entirely upon the parents for support, it is but reasonable that the rules which are to regulate their conduct should be framed by the parents. As the father and the mother are both equally interested in the end toward which all family discipline is directed, ordinarily there will be no conflict in authority. Should differences arise, as there must be some ultimate appeal, the supreme authority rests, by common consent, by the nature of the case, and by the laws of the land, with the father. The form of the government is, therefore, that of a monarchy.

34. **Parental Duty.** — The duty of the parent is to support the child during the helpless years of its minority. If it be sick, the parent must supply care and medical attendance. The child is not only to be fed, clothed, and governed, but also to be suitably educated. The nature of this support, and the extent of the education, will necessarily depend upon the circumstances of the parent. Children of the rich and poor cannot be provided for alike; but the one will have better food and clothing, and better educational advantages than the other. Food, clothing, and education are rights which belong to the child; and if the parents do not furnish them, they will be liable to punishment by the civil authorities.

35. **Parental Authority.** — Among the Romans, the father could enforce obedience, not only by the milder means of correction, but could even take the life of his child if he saw fit. Parental authority extended also to any property that might come into the possession of the child during the father's lifetime. With us, the parent may inflict moderate corporal punishment, but his authority ceases entirely

over personal property when the child becomes of age. Whatever he may earn before his majority belongs to the father; but this is not the case with property acquired from any other source (131). The master may bar his doors against any one, and ordinarily even a sheriff is not permitted to search a house, unless he can produce a warrant (189).

36. **Obedience.** — The law not only gives the parent the right to govern his household, but makes it his duty. Children must obey their parents, and no reason need be given for the command. No habit is more valuable than that of rendering perfect obedience to those in rightful authority. In a modified degree this duty to obey extends to any who may seek the protection of the household.

37. **Resources of the Family.** — The income of the family will be derived principally from the labor of the different members, and from whatever property may belong to it. We have seen that the property is held in common (31); but this only means that the income arising from it is expended for the common good. The legal control of it is wholly in the hands of the parents during the lifetime of the father, who at his death may dispose of all, except the portion the law reserves to the mother (130), as he sees fit. He may disinherit his children if such is his desire. If, however, no will be made, the law provides that each child shall have a share.

38. **The Homestead.** — When a family owns a home, the house and the land immediately surrounding it is called the homestead. This may consist of forty acres of land, or even of a larger amount; or of a dwelling house and a

single lot; or of a lot, if the purpose be to build a house upon it with the intention of making it a home; or even of money in the bank, if it came from the sale of a homestead and is being kept to purchase another. In general the husband is permitted to sell any personal property which he may have himself acquired either before or after marriage, or which the family may have acquired by the labor of any member, without the consent of the wife; but this is not the case with the homestead, and in some of the states the same rule applies to all real estate (133).

39. **Exemptions.** — Besides the homestead, which, if it be below a certain value, is always exempt from sale upon execution (186), there are also certain articles of personal property (187) which cannot be taken from the family by the officers and sold for the payment of debts, without the consent of the father or the mother, and sometimes of both. Among these articles may be enumerated the household furniture, the clothing one wears, and the tools which are necessary to enable the householder to carry on his business. The earnings of a married debtor for his personal services are generally exempt, either absolutely up to a certain amount, or, as in Arizona, for the amount earned during a fixed period of time immediately preceding the commencement of suit, if they are necessary for the support of the family. It is by means of the homestead and exemption laws that society protects the helpless members of the family from the distress which a rapacious creditor might otherwise bring upon them.

So far has this principle been carried that, in some states, a householder may be worth several thousand dollars in property not liable to seizure.

TOPICAL ANALYSIS

1. Our home.
2. The marriage relation; divorce.
3. The family.
4. Object of the family relation.
5. Form of government.
6. Parental duty.
7. Parental authority.
8. Obedience of children.
9. Resources of the family.
10. The homestead.
11. Exemptions.

QUESTIONS AND EXERCISES

1. How old must a boy be before he is entitled to his own wages?
2. If a child commits a wilful injury upon another, will the parent be responsible?
3. Consult the statutes of your state, and make a list of articles which are exempt from seizure upon execution.
4. How may the name of a person living in this state be legally changed?
5. Why does the law permit a man to give his property to strangers by will, if he sees fit?
6. In what two ways may a person become a member of a family?
7. What is alimony?
8. In what two ways may uniform divorce laws be secured?
9. Who wrote "Home, Sweet Home"?
10. Why does the law protect the homestead?

IV

THE SCHOOL AND ITS GOVERNMENT

"Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." — *Ordinance of* 1787.

40. Education a Necessity. — The term "education," as here used, means that knowledge and discipline derived from the study of the so-called common branches, and are usually obtained in the elementary schools. This much at least is necessary, not only for our protection in business life, but also to enable us to discharge the simplest duties of citizenship. So important is it considered in this country that every child should have an opportunity to acquire a common school education at least, that all concede it to be the duty of the state to furnish it. Even those who entertain the strictest views as to the functions of government (28) do not deny the right of the state to levy a tax for the support of the public schools. Many of the states have enacted laws to compel children between certain ages to attend school for a certain number of months during each year.

41. The Tuition School. — The school, it must be remembered, is of very ancient origin. There were famous schools and learned teachers in Egypt, India, Greece, and Rome long before the birth of Christ, and we have records

of English schools antedating the reign of Edward III. It was not, however, until comparatively recent times that the free school was established. Before that the teaching of the common branches was intrusted to instructors employed and paid by the parents, and only in some of the great universities was the tuition free. Even now it is only among the more progressive nations that the elementary school is supported wholly by the state.

42. The Public School. — The public school system of this country had its origin in New England. In 1647 the General Court of Massachusetts declared that, "In order that learning may not be buried in the graves of our fathers" a schoolmaster shall be employed in every township of fifty householders "to teach all such children as shall resort to him to write and read." This law laid the foundation of the free common school system of the United States. It was, however, left for the town meeting to determine in what manner the teacher's wages should be paid. The church school was supported by taxation, and when the parents of a sufficient number of town children did not wish them to attend the church school, the town authorities could maintain one for them. Still it was not until 1827 that in Massachusetts the common schools were wholly supported by the state.

In 1787 the Continental Congress passed an ordinance for the government of the territory northwest of the Ohio River containing this clause, "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." In pursuance of this policy Congress set apart the sixteenth section of the public

domain (73) for the support of schools. Thus was the principle of state aid firmly established in those states formed out of the Northwest Territory, and the principle of full state support for the common schools has not only been adopted there, but in every state in the Union.

43. **Private Schools.** — Besides the public schools which every taxpayer, including in some states every elector, must help support, there are thousands of schools maintained by church organizations and by private individuals. Church societies maintain denominational schools because they desire to have the children of the congregation given both religious and secular instruction. The constitutions of most of the states forbid the use of public money for the support of any sectarian school, and also provide that no church doctrine shall be taught in any of the public schools. Nearly all of the smaller colleges are under the control of some church society, and the service which they have rendered to education has been very great.

Besides the denominational schools there are many others which are maintained by private enterprise. Under this head would come the kindergartens, so numerous in the cities, young ladies' seminaries, manual training schools, business colleges, and private normals. That there is a place for these in our educational system as at present administered is evident from the fact that so many of them exist and prosper.

44. **Definition of a School.** — A school may be defined as a number of pupils collected in one body, and under the charge of one person, for the purpose of receiving instruction. It is the second form of government with which we become acquainted. The one who imparts this instruction

and exercises this control is called the teacher. Such a school may exist independently, or it may be one of the units of a system. The term may also properly be applied to any number of these units organized under one head.

45. **The School District.** — The school district is the area set apart for the support and government of the school, whether it consists of a single unit or of a collection of such units united into one system. In cities, and in those states where the township or county system prevails, the term has a secondary meaning, and refers to the area within which the pupils must attend a particular school building. According to the first sense of the term, school districts vary in size from a few sections of land to a whole county. In the second sense there is less variation. In Michigan the country districts may not exceed nine sections, and are generally much less. The school officers always endeavor to locate a schoolhouse within two miles of each child's home; and in some of the older states, if the distance be greater, a method of conveying the pupils to and from school is provided.

46. **The School Board.** — The governing body of the school district, or corporation, is the school board, or school committee, as it is sometimes called. It usually consists of three or more members called trustees, supervisors, or directors, who are elected at an annual meeting, and hold their offices for one or more years. This board transacts all the business of the corporation, employs the teacher, formulates rules for the conduct of the school, and performs such other duties as are required or permitted by the law creating it.

47. **The School Trustee.** — There is a distinction to be

drawn between the power of the board as a whole and that of a single trustee, who is simply a member of the board. The board can act only by passing a resolution at a meeting where a majority are present; and a trustee can do nothing unless he is authorized by such a resolution, or by the school laws of the state. A trustee may very properly call the attention of the teacher to defects in the management of the school, and this it is his duty to do; but he should not himself attempt to discipline or instruct. In most states women as well as men can hold the office of trustee. Sometimes the members of the board receive pay for their services, but the amount is never large. For neglect of duty a trustee can be removed by the proper authorities.

48. **Authority of the Teacher.** — Like that of the family, the form of the school government is monarchical; but in the exercise of his authority the teacher is restrained by customs and regulations which he must be careful to obey. From the decision of the parent there is no appeal; but from that of the teacher there is.

In the Middle Ages the schools were conducted wholly by the teacher. The pupils were intrusted to them by the parents, who delegated their authority, and hence the teacher was said to stand *in loco parentis*. In the chartered schools of England, even to this day, the pupil is in the hands of the master, or teacher, whose authority is as unlimited as is that of the parent; but in this country it is not so extensive. Our courts will generally sustain a teacher even in inflicting corporal punishment; but they will look carefully into the circumstances of each case, and insist that the punishment be reasonable.

49. **School Regulations.** — The acquiring of learning is not the only object of our public schools. To become good citizens, children must be taught self-restraint and obedience. They must submit to such reasonable requirements as to be quiet in deportment, studious in their habits, and regular and prompt in their attendance. A failure to observe any one of these conditions would not be exercising their own rights in such a way as not to interfere with the rights of others (13).

50. **Examination of Teachers.** — One of the most important duties which rests upon the school officers is the selection of teachers. A knowledge of the subject to be taught is a necessity, and to find out whether a candidate for a position in the public schools possesses it, every state provides by law for an examination. Sometimes the duty of holding this is intrusted to the district board, sometimes to township officers, but more frequently to county officers (277). A higher grade of certificate is also issued by a state board of education, of which the state superintendent of public instruction (329) is usually a member *ex officio*. In addition, the diplomas granted by state normal schools, and in some states certain ones granted by the state university, are legal certificates. Those issued by the township or county authorities are generally for one, two, or three years; but all others are for life, and entitle the owner to teach anywhere in the state. In California the state board of education has made up a list of colleges and universities, called "accredited schools," whose diplomas entitle the holder to teach without passing an examination.

51. **Resources.** — Formerly the fees paid by the pupils

were the chief reliance of the teacher, but this is now true only in the case of private schools. The public schools derive their support principally from four sources: taxation, the primary school money, the poll tax, and the tuition of non-resident pupils. All the states do not levy a poll tax for this purpose. As a rule, by far the greater part is obtained from direct taxation; and the school tax often forms the largest item in the annual contribution which every property owner is called upon to make for the support of the government.

TOPICAL ANALYSIS

1. Quotation from the ordinance of 1887.
2. A common school education a necessity.
3. The tuition school.
4. Public schools in America.
5. Private schools.
6. Definition of a school.
7. The school district.
8. The school board.
9. The school trustee.
10. Authority of the teacher.
11. School regulations.
12. Examination of teachers.
13. Resources.

QUESTIONS AND EXERCISES

1. How can the home and the school be helpful in the development of good citizenship?

2. What is the penalty in this state for employing an unlicensed teacher?

3. Has this state a compulsory school law?

4. Justify the right of the state to levy a tax for the support of high schools.

5. Draw a map of your school district.

6. Should a school officer serve without pay?

7. Write five rules which the pupils should obey; five that a teacher should observe.

8. What does it cost per capita to send a pupil to this school for one year?

9. What educational institutions does a national government support?

10. What is the rate of taxation for school purposes in this district?

V

FROM INFANCY TO MANHOOD

"There are gains for all our losses,
There are balms for all our pain;
But when youth, the dream, departs,
It takes something from our hearts,
And it never comes again." — R. H. STODDARD.

52. **Infancy.** — The Roman law divided the first twenty-five years of a person's life into infancy, childhood, and youth. Infancy comprised the first seven years, childhood extended from the close of the seventh to the end of the fourteenth year, and youth from this period until the age of twenty-five. Our laws do not adhere quite so strictly to these divisions, but, in a general way, they are still observed. With us a person is an infant in the eyes of the law until he is twenty-one years old. In some states women are of age at eighteen.

The word "infant" signifies one who cannot talk. Of course this means one who cannot talk understandingly. At the common law (24) a child under seven years could not be convicted of crime, for the reason that one so young does not have sufficient understanding to be capable of committing a criminal act.

53. **Childhood.** — Between the ages of seven and four-

teen the law presumes a child incapable of committing crime; but this presumption of innocence may be overcome by evidence. The question is, whether there was guilty knowledge of wrong-doing. The evidence of criminal capacity would have to be very strong during the early years of childhood; but this strength would gradually diminish. During these periods it is not proper that children should be subjected either to a severe mental or physical strain. It is the duty of teachers to prevent as far as possible the former by frequent change of studies, by giving frequent periods for relaxation, and by so arranging the work that the children may be able to prepare their lessons during school hours. The state endeavors to protect them from physical harm by forbidding their employment in factories, and by appointing inspectors whose duty it is to see that the laws are enforced.

54. **Youth.** — After we have passed the age of fourteen we can no longer excuse our own misconduct by pleading ignorance of the rights of others. As our knowledge increases so does our responsibility, and as to all criminal charges the youth is treated as an adult. When this period has arrived the common school course of study should have been completed. The circumstances of his parents may be such as to require his services for the remainder of his minority, and, if so, they are entitled to them. But if practicable, he should take a higher course of study, the nature of which will be determined partly by his tastes and partly by his situation in life.

55. **Associates.** — The child is an imitator. He observes the manners of his associates and copies after them. If

his playmates are gentle, well-behaved boys and girls, he will become a cultured, lovable child. If his father, his mother, and the neighbors are law-abiding citizens, he will become a good citizen unconsciously. If the surroundings have a demoralizing tendency, it is the duty of a good citizen to attempt to improve them. The state seeks to do this by prohibiting the location of saloons within a certain number of blocks of a schoolhouse, and in some places none are allowed anywhere. The child, however, does not learn by imitation alone; but must be instructed as to his duties to others, and as to what he has a right to expect from others, for rights and duties are always reciprocal.

56. **Civil Officers.** — As we advance from infancy to manhood, we gradually become conscious that our parents and teachers are not the only ones to whom we owe obedience. We learn from observation that even men and women cannot at all times do as they like with their property, but that they must often yield to the wishes of others. The owner of a rented house, for example, must give his tenant an opportunity to procure another before the law will put him in possession of it. Those persons who are designated by law to enforce the regulations which society has established between individuals, and between the state and an individual (5), are called civil officers.

57. **Other Officials.** — Besides the civil officers, whom we are all compelled to obey, there are certain others who rule us because we choose to let them. Such are the pastor and trustees of a church, the officers of a lodge or of a literary society. In any of these cases we may withdraw from the organization, and thus terminate the relation of

ruler and subject. But so long as we remain members, we must yield to reasonable requirements, or the civil authorities will interfere.

58. **Legal Liability of a Minor.** — The contracts of a minor cannot be enforced against him if he denies his liability by reason of his non-age. To this rule there is one exception, as his contract for necessaries is good. This is but reasonable, for he might suffer severely if he could not pledge his credit for food, clothing, medical attendance, and even education. The term "necessaries" must not be taken in its strict sense; but must be considered with reference to the minor's situation in life. For example, a common school education is always considered as necessary; but a collegiate course may or may not be. The law permits a minor to engage in business, but discourages it by rendering it difficult. His commercial contracts are always voidable, and the trader who sells him goods does so at his peril. The minor may not even bring a suit in his own name, but must do so by his next friend.

59. **The Law a Shield.** — If one who has attained his majority wishes to transact business with a minor, he may do so, but it is dangerous. He must perform his part of the contract, if the minor shall insist upon it, while the latter is entirely free from legal responsibility. A minor may act as an agent or servant, and the courts will enforce any contract for employment, although the wages must be paid to the parent if he insists. The parent, however, may emancipate his child, and the latter can then collect his own wages. This is commonly called "giving a minor his time." But all these laws are intended for a shield, and not as a sword. Hence, as in the case of crime, so for any

injury done maliciously to the property of another, the minor is alone responsible. But if it can be shown that the parent was negligent in not exercising the proper control over his child, then he must pay the damages.

60. **Self-control.** — Among the duties which we owe to ourselves and to others is that of self-control. When we know it is wrong to commit a certain act, we should refrain from it, not because we are in fear of punishment, but because we wish to do right. Every one owes it to himself to control his own temper. There is no nobler conquest for any man to make than the conquest of himself. No one can, for any length of time, command the respect of others who lacks the mastery of himself.

61. **Personal Habits.** — Nothing, perhaps, is more potent for good or ill than the habits we form in our youth. Many a bright future has been clouded, many a life rendered unhappy, because of ways of thinking or of acting which were detrimental or distasteful to others. We should be very careful to avoid such habits, and if we have acquired any, we should, by the proper exercise of self-control, correct them at once. At the head of good mental habits stands honesty. By this is meant, not simply the disposition to pay our debts, although this is included; but, in a wider sense, it is that quality which enables us to form a true estimate of our own worth. This is the strongest possible safeguard against self-deception and the flattery of others. We should also cultivate neatness in our personal appearance, politeness in our demeanor, and correctness in our use of language. We should avoid the use of slang, and be considerate of the opinions and feelings of our associates. Purity of thought will lead to a pure life, and this

in turn to self-respect, which alone can command the approval of our fellow-men.

> " Self-reverence, self-knowledge, self-control,
> These three alone lead life to sovereign power."

TOPICAL ANALYSIS

1. Infancy.
2. Childhood.
3. Youth and its responsibilities.
4. The influence of associates.
5. Civil officers.
6. Other officials.
7. Legal liability of a minor.
8. The law a shield, and not a sword.
9. Self-control.
10. Honesty the most important of mental habits.

QUESTIONS AND EXERCISES

1. Why is a knowledge of the Roman law important?
2. What acts in a child of ten would show a capacity to steal?
3. Self-control brings self-respect. Why?
4. Why do we always respect one who never speaks ill of another?
5. How may one break up a bad habit?
6. Water will not rise higher than its source. Apply this to the character of governments.
7. With what relations does the civil code deal?
8. Is it safe to deed land to a minor?
9. Make a list of habits which will interfere with one's success.

Part II

The Township and its Government

Chapter VI.	The Congressional Township
Chapter VII.	The Civil Township
Chapter VIII.	The Civil Township — Executive Department
Chapter IX.	The Civil Township — Legislative Department
Chapter X.	The Choice of Township Officers
Chapter XI.	The Right of Private Property
Chapter XII.	Real Property
Chapter XIII.	Personal Property
Chapter XIV.	Business Enterprises
Chapter XV.	Protection of Person and Property
Chapter XVI.	The Township Court — Civil Side
Chapter XVII.	The Township Court — Criminal Side
Chapter XVIII.	A Civil Case in a Justice's Court

VI

THE CONGRESSIONAL TOWNSHIP

"The United States has always been able to offer to the settler an unlimited quantity of rich and uncultivated soil, on which he might locate, and take such a part as the law allowed, at a cost which made it a gift rather than a purchase. This has made us a nation of land-owners — a nation in which a marked distinction of classes is impossible, one man being as good as another, and all possessing equal rights." — Adapted from *Lalor's Cyclopedia.*

62. **Historical.** — At the beginning of the Revolutionary War, six of the thirteen colonies — Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, and Georgia — claimed that their "from sea to sea charters" gave them the lands between the mountains and the Mississippi. New York also had bought the title to land in the Ohio valley. The remaining colonies had no claim to Western lands. Prior to 1781 but six of the original states — New Hampshire, Rhode Island, New Jersey, Pennsylvania, Maryland, and Delaware — had exactly defined boundaries.

63. **Cessions to Congress.** — Previous to 1784 Massachusetts, New York, and Virginia had ceded their lands to Congress, which thus came into possession of all the country from the Lakes to the Ohio, and from the Mississippi to Pennsylvania, except the Western Reserve, the jurisdiction to which was soon after acquired. This

formed the Northwest Territory, from which slavery was excluded. Subsequently North Carolina and South Carolina ceded their lands upon condition that it should be slave soil. Finally, in 1802, Georgia ceded her Western lands, which were added to the Western Territory.

64. **Disposal of the Public Lands.** — By these cessions of the original states, and the subsequent additions by purchase and annexation, the United States has come into possession of a vast public domain, which has been of the greatest service in the development of the nation. It has ever been the policy of the national government so to dispose of the public lands as to encourage its ownership in small quantities by those who would actually cultivate it; to bestow it upon the states with the understanding that the proceeds should be held as a trust fund, the interest to be used for educational purposes; or to grant it in aid of the construction of railroads which, by providing an easy means of communication, would open the country for settlement. This policy, uniformly followed since the foundation of the government, has made us a nation of small land-owners; has furnished profitable employment for the industrious, and an abundance of cheap food for ourselves and to spare; and has rendered easy the spread of the free school system, besides being instrumental in establishing more than forty agricultural colleges in the different states and territories of the Union.

65. **Government Survey.** — As soon as Congress had come into possession of the public lands, immediate steps were taken to open them for settlement. In the original thirteen states no regular system of survey had been followed; but now the public domain was, by act of Congress,

divided into tracts six miles square, called townships, and each of these again into thirty-six smaller tracts, called sections, and each containing 640 acres as near as may be. The townships are named from their number in the range, as Town 14 North of Range 3 East. A "range" is a tier, or row, of townships lying between meridian lines.

66. The Congressional Township. — The congressional township is simply a tract of land six miles square, according to government survey. Its purpose is to form a convenient method of describing land. Its boundaries and divisions, as fixed by the government, cannot be altered by any state legislature. It has no political powers whatever. In all the states formed out of the public domain the civil townships, as a rule, correspond exactly in size and in boundaries with the congressional townships; but this is not always the case.

67. Prime Meridian and Base Line. — The surveyors first establish a prime meridian running due north and south, and a base line running due east and west. This is done astronomically. These two lines form the bases of all subsequent subdivisions into townships, sections, and half-sections. The half-mile, mile, and six-mile corners are permanently marked on these lines.

68. The Townships. — From the six-mile corners other meridians are established, and the half-mile, mile, and six-mile corners permanently marked. The six-mile corners on this meridian are connected with the six-mile corners on the prime meridian line, and the half-mile and mile corners permanently marked. Owing to the convergence of meridians, this last line is less than six miles in length.

69. **Convergence of Meridians.** — If the earth were perfectly flat, all measurements east and west could be taken from the prime meridian, and the townships would all be of the same size. Owing, however, to the spherical form of the earth, the meridians constantly converge as we approach the north, and diverge as we go south until we reach the equator. If, now, no new north and south lines were established, the townships would constantly diminish in size, until they would disappear. To avoid this a guide meridian is established, and by its use the error is corrected. All surveys are made toward the north.

70. **Correction Lines.** — In consequence, also, of this convergence, if corrections were not made frequently, the size of the townships would decrease toward the north until between those widely separated the difference would be very great. To avoid this, every twenty-four miles north, and every thirty miles south of the base line, parallels are drawn, which are called correction lines. By means of the guide meridians and correction lines the congressional townships are kept uniform in size.

71. **Sections.** — If now we connect the opposite mile corners, each township will be divided into thirty-six parts, called sections. If we connect the opposite half-mile corners, we shall divide each section into quarters. The out-boundaries of the sections are required to be surveyed; but the minor divisions are designated by imaginary lines. The sections are numbered from 1 to 36, beginning with the upper right-hand corner. Each section is supposed, by law, to contain 640 acres; but, as a matter of fact, they are not all of the same size. All excesses or deficiencies, owing to convergence of meridians or error in chaining,

are thrown into the north and west tiers of sections and half-sections.

72. **Descriptions.** — The location of even a part of a section in the government survey is very simple. You have only to locate your purchase on a survey map, and, as some boundary marks are always placed at the intersection of the divisional lines, your lot can readily be found. In the original thirteen states the descriptions are not so easily traced, for the boundaries are often obscure, the deed calling for "an oak tree" or "a certain pile of stones," as a starting-point in the survey. As the public roads in the new states are, for the most part, laid out on sectional lines, it is not at all difficult to find your way through the country.

73. **Acquiring Lands.** — Title to lands owned by the United States is acquired by gift and by sale. Never in the history of the world has any government given away, or sold at a very low price, such vast quantities of land as has ours. For educational purposes the states have received 100 millions of acres; and for internal improvements, 162 millions. Railroad corporations have received over 150 millions, and other millions have been given to our soldiers and sailors, on their honorable discharge, for their services to the government. Private individuals not soldiers or sailors have obtained government lands under three separate acts of Congress: —

1. *Under the Homestead Laws.* — Any citizen over twenty-one years of age, and who is not the proprietor of 160 acres of land in any state or territory, has the right to locate upon 160 acres of the unsold land of the United States. He must enter the land in the proper land office,

and live upon it continuously for five years. All he has to pay is the charge of the land office, which is very reasonable. "The homestead act stands as the concentrated wisdom of legislation for the settlement of the public land."

2. *Under the Preëmption Laws.* — Any citizen over twenty-one years of age, who does not already own 320 acres of land in any state or territory, may settle upon not to exceed 160 acres of the unoccupied land belonging to the United States. He must build a house upon the land, live upon and improve it for one year. Upon making the proper proofs, he may then purchase the land at $2.50 per acre if within the limits granted to railroads, and at $1.25 per acre if outside such grants.

3. *Under the Timber Culture Act.* — This act gives to any one the right to 160 acres of the $1.25 land if he will plant 10 acres of timber, or 80 acres of the $2.50 land if he will plant 5 acres of timber.

TOPICAL ANALYSIS

1. Effect of cheap lands upon our national character.
2. Land claims of the thirteen colonies.
3. Cessions to Congress.
4. Land policy of the United States.
5. The government survey.
6. The congressional township.
7. Standard parallel meridians.
8. Townshiping and subdividing.
9. Convergence of meridians.
10. Correction lines.
11. Sections.
12. Descriptions of lands.

13. Title to land owned by the United States acquired: —
    (1) Under the homestead laws.
    (2) Under the preëmption laws.
    (3) Under the timber culture act.

QUESTIONS AND EXERCISES

1. Make a diagram showing the N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of section 1.

2. Divide the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of section 1 into 10-acre strips and describe one of them.

3. Would you prefer to have the N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of section 6, or the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of section 1? Why?

4. A road is laid out north and south through the county between the first and second tiers of sections. Is it a straight line?

5. Is there a government land office in this state?

6. Copy a description of land from a deed, and locate the property.

7. In what congressional township do you live?

8. Was it good policy for the government to give so much land to the railroads?

9. Of what benefit have the agricultural colleges been to the country?

10. In what state is the Western Reserve located?

VII

THE CIVIL TOWNSHIP

"The townships in New England are the vital principle of their government, and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation." — THOMAS JEFFERSON.

74. **Historical.** — The civil township had its origin among the ancient Germans. Originally the inhabitants of a particular district, or Mark, were united by blood-relationship, held property in common (37), governed themselves by primary assembly of all the free inhabitants, and thus formed a semi-independent community. The Saxon conquerors of England carried their idea of self-government from their homes upon the banks of the Elbe and Weser, and the Mark of Germany became the township of the English political system.

75. **The New England Town.** — The settlers of New England transferred the English township to America, and each settlement was organized after that model. At its centre was a group of dwellings, often surrounded by a fence or wall; but there was also included a rural area of several square miles. The town covered the whole of this area, which was never too large for all of the inhabitants to come together at the central place. Curiously enough, the Greek settlement was organized upon a similar plan.

76. A Political Division. — When we speak of any political division, as a school district, a township, or a state, we may have either of two things in mind. We may think of its location, its extent, and its boundaries, or of the body of people who occupy the territory. A complete definition must contain both of these ideas.

A township is a political division of a state, organized for certain local and political purposes, the inhabitants being constituted a body corporate. A corporation, or body corporate, is a fictitious person, consisting of several individuals associated together by law for a particular purpose. When this purpose is that of local self-government, it is called a municipal corporation.

77. A Political Unit. — We must become thoroughly acquainted with the organization of the civil township, for in New England, and in many of the Middle and Western states, it is the unit of the political system. Even in those states where the county is the political unit, one of the divisions of the county has some of the features of the township government. A village is a division of a township; a city is a township having special privileges under a charter; a county is a group of townships; and a state is a group of counties. As in our study we shall ascend the scale, we should bear in mind that the aim is to leave the local government with the smaller divisions, and to intrust to the larger only those general powers the exercise of which requires a greater extent of territory and a more numerous population (302, 404).

78. The Birth of a Township. — A civil township is a corporation (76), and, like a natural person, it must have a birth. It can only come into life through a general or a

special act of the legislature, and the constitutions of some states do not permit its incorporation by the latter method. The act always contains the framework of the new organization, at the same time giving directions how to proceed. When these conditions have been complied with, a new township is born. It is usually necessary that a court, or a board of supervisors, should give its assent to the formation of a township.

79. **Twofold Purpose.** — The purpose of the Southern parish was religious; that of a New England town, both civil and religious; that of the Western judicial township, wholly civil. As a civil organization, the town elected its officers, provided for the care of the poor, the restraint of the vicious, the carrying on of public improvements, and the protection of the health of the community. As a religious organization, it chose its own ministers and church officers, regulated the affairs of the church, and provided for the discipline of its members and the education of its children.

80. **A Pure Democracy.** — Isolated as were the early settlements of New England, and widely removed from the oversight of the mother country, the towns became "miniature commonwealths," and exercised their authority "on thoroughly democratic principles." Once during the year, and sometimes oftener, the form of the township government was that of a pure democracy (20). This was at the annual or special meeting, when every voter could not only cast his own ballot as he saw fit, but could take part in discussing measures which were offered for adoption.

81. **The Town Meeting.** — The influence of the annual, or "town meeting" as it was called, was very great. As a means for acquiring information it was to those early set-

tlers what the newspaper is to us. Here it was that the voters engaged in spirited debate over the domestic affairs of the community; here they listened to and were influenced by their ablest men upon matters of general interest to the whole colony; and here were developed that spirit of independence and that familiarity with the methods of self-government upon which has been reared the enduring structure of our national life.

82. The Judicial Township. — If you will strip the New England township of all its powers except the judicial, you will have left the judicial township of California, or the justice's precinct of Arizona. These are the extremes, the system in many of the states being a compromise between the two. In California the county has three divisions: the road district, the election precinct, and the judicial township. The boundaries of each of these divisions are fixed by a board of supervisors, consisting of five members, elected from the whole county. The judicial township is the more stable of the three divisions, its officers being the justice of the peace and the constable, who are elected by the voters in the township. In Georgia there are over twelve hundred justices' districts, which, however, are called "militia districts," in each of which there must be at least one hundred voters capable of bearing arms. These remind us of the English division of the county into hundreds. In Delaware the term "hundred" is still preserved.

83. Township and County Units. — In comparing the township and county systems of local government, the former would appear to be superior as a school for political training; the latter as a business organization because,

for one reason, it employs fewer agents. The one is based upon the principles of home-rule; the other is monarchical in its tendency. The first distributes the local offices among the greater number, and fixes the attention upon the township; the second, by transferring the local business to the county, arouses a greater interest in county and state affairs. In those states where the township system prevails, the annual town meeting, generally held on the first Monday in April, calls out a much larger vote than do the county and state elections, which are held in the fall. Under the county system the interest is focussed on the fall election; for the officers to be chosen belong both to the county and to the locality. Even the justice of the peace and the constable, although elected by the voters in a single judicial township, are in a certain sense county officers. As a school for patriotism, the county system is hardly inferior to that of the township; for the history of the Spanish-American War shows that, in this respect, there is little difference between the citizens of the different states. We are all patriots.

TOPICAL ANALYSIS

1. Jefferson's estimate.
2. The German and the English unit of government.
3. The New England township.
4. Definitions: political division; township; corporation.
5. Incorporation of a township.
6. A civil and a religious organization.
7. A pure democracy.
8. Influence exerted by the town meeting.
9. The judicial township.
10. Township and county units compared.

QUESTIONS AND EXERCISES

1. What church organization settled New England?

2. How does the township in which you live compare in size with a congressional township?

3. What is meant by "democratic principles"?

4. New England has been described as a system of "village republics." Why?

5. What qualities of good citizenship did the town meeting develop?

6. Give another reason why the county system is the better business organization.

7. What objection is there to incorporation by a special act?

8. Connect Samuel Adams with a town meeting held in Boston.

9. What is a trading corporation?

10. From one of your township officers learn how to call and organize a special town meeting. Hold such a meeting, and discuss the following question: —

"Resolved that this township should have a public library."

11. For the discussion of public questions in cities what takes the place of the town meeting?

VIII

CIVIL TOWNSHIP — EXECUTIVE DEPARTMENT

84. Powers and Duties Classified. — In the two kinds of government we have already considered, the parent or the teacher was at one and the same time lawgiver, judge, and executive. The union of these distinct powers and duties in the hands of one person is feasible where only a few individuals are concerned, and the objects to be attained are easy of accomplishment. But when the people become more numerous, and are distributed over a wide extent of territory, the task becomes more difficult. It will now be found convenient to classify the powers and duties of those in authority into the three departments, — executive, legislative, and judicial (21).

85. The Elective Franchise. — In a free country the right to choose public officers always rests with the people. This is called the elective franchise, or right of suffrage, and those who are entitled to exercise it are called electors, or voters. The elective franchise is not an absolute right (4), but is conferred by the law of the state, and no state confers it upon all the inhabitants, or even upon all the citizens. The right of suffrage has been restricted by sex, education, property qualifications, and color. It may be lost by conviction of a felony, removal from the township or state, loss of reason, or change in the law. An elector

must have resided in the state and township or ward for a certain length of time before he can vote. He must also be a citizen of the United States, or have declared his intention to become one.

86. **The Township Charter.** — The township officers must look for their authority to the general or special act of incorporation (78), to the statutes which the legislature has passed for their guidance, and to the decisions of the courts which have interpreted these statutes. The act of incorporation, and the statutes as thus interpreted, form the charter, or constitution (23), of the township, and the power of every officer is strictly limited by it.

87. **Distribution of Powers.** — An examination of these charters, in different states where the township system prevails, will show that they agree in the following particulars: —

1. The executive duties are distributed among several different officers, who are elected at the annual meeting.

2. There always exists a legislative department under the title of board of trustees, of selectmen, of chosen freeholders or township board.

3. The judicial interests are confided to officers called justices of the peace, who have a limited jurisdiction in civil and criminal matters. The ministerial officers of the justice's courts are called constables, or marshals.

88. **Township Officers.** — The instruments by which the township accomplishes the purposes for which it was organized (79) are the township officers. They are chosen by the electors at the annual meeting, and hold their offices for terms of various lengths as provided by the laws of the particular state in which the township is situated. The

powers and duties of public officers are carefully defined by law, and a penalty (26) can be inflicted upon any one who fails to discharge it.

89. **Chief Executive.** — Sometimes the general management of town affairs is put in the hands of three, five, seven, or nine citizens called selectmen; but as a rule there is one officer who is charged with that responsibility. No matter what title this officer may bear, he is the chief executive of the township; represents it in the county legislature; appears in any suit that may be brought by or against his township; and ordinarily acts as chairman of the annual meeting of the town board, and sometimes of the other boards. In some states he also assesses the taxes and looks after the poor.

90. **Township Clerk.** — There is also a township clerk who has charge of the records. He is clerk *ex officio* of the annual meeting, and of all the township boards of whatever nature. He receives and keeps on file chattel mortgages (145), keeps an account with the township and county treasurers, and makes out and transmits to the proper authorities all the election notices. The records and files of the clerk's office may be freely examined by any one who is able to give a good reason for so doing.

91. **Treasurer.** — The treasurer has charge of the funds, receives whatever is due from the county or from any other source, and pays out the money upon properly drawn warrants. He also renders an account at the close of the year to the township board. In some states he collects the taxes, always gives a bond to secure the township against loss, and as a rule can hold his office for not more than two terms in succession.

92. **Highway Commissioner.** — The highway commissioner has general charge of all the roads and bridges in the county. He divides the township into road districts, lays out new highways, and orders repairs upon the old roads when he deems it necessary. The overseers of highways work under his supervision, and it is his duty to bring suit against them for neglect when occasion demands. All bridges are constructed and repaired under his direction.

93. **Other Officers.** — In addition to the officers already mentioned, there are often pound masters, fence viewers, a health officer who must, if possible, be a competent physician, and such others as may be required from time to time by the peculiar situation of the community. It will be seen that a large number of the citizens of a township are actively interested in the management of its affairs. In the course of several years it will often happen that nearly every citizen of the township who is sufficiently capable will have held some office. No better method has yet been devised for inducing men to think than to require them to bear responsibility. The holding of even an humble office involves a responsibility which, though small to the more experienced, is large to the unskilled. Such men usually take pride in conducting their offices well, their ambition is aroused, and the knowledge they will have gained from serving one or more terms will make them competent critics of their successors. Thus the township system is a most excellent training school for the education of the citizens.

94. **The County System.** — Under the county system the executive duties above mentioned are performed by

county officers (82). In California each road district has one of its supervisors as highway commissioner, and his deputies correspond to the township overseer. The county assessor, aided by his deputies, assesses the taxes, and the county treasurer collects them. A county officer looks after the health of the whole county, and an inspector of charities takes care of the poor.

TOPICAL ANALYSIS

1. Reasons for threefold division of the township government.
2. Right of suffrage; limitations of that right.
3. The township charter.
4. Threefold distribution of powers.
5. Township officers.
6. Duties of the chief executive.
7. The town clerk; the treasurer; the highway commissioner.
8. Other officers; benefits of office-holding.
9. Discharge of similar duties under the county system.

QUESTIONS AND EXERCISES

1. Why ought the term of the treasurer to be limited to two terms in succession?

2. Under what circumstances would the office of "fence viewer" be necessary?

3. Should the right of suffrage be restricted by sex?

4. What objection is there to incorporation by special act?

5. Which is the better plan, one supervisor or three selectmen for chief executive?

6. Draft a special notice for a town meeting to vote upon the question of purchasing a site for a town-hall.

7. Organize this special meeting and discuss the advisability of the movement.

8. By what officers must a warrant on the treasurer be signed?

9. How does the clerk act as a check upon the treasurer?

10. How can a township officer be removed in this state?

IX

CIVIL TOWNSHIP — LEGISLATIVE POWERS

95. Vesting of Legislative Powers. — Except for the brief period when the annual meeting is in session, the legislative powers of the township are vested in its boards. Sometimes all this power is intrusted to one board, and sometimes to several, which hold the relation of principal and subordinate. Where there are no subordinates, the business is largely transacted through committees. The resolutions of the chief board, when authorized by the charter, regularly passed, and properly recorded, have within the township the full force and effect of laws. They are sometimes called "by-laws," the word "by" meaning town.

96. Township Board. — As a legislative body the principal board can authorize the levying of a sufficient tax to defray the running expenses of the township, in case the electors fail to do so at the annual meeting; grant a franchise to a street railway company; establish a quarantine; divide the township into election districts; make the necessary rules and regulations for the guidance of the commissioner of highways; authorize the letting of contracts and the purchase of property for township purposes, and perform such other legislative acts as are permitted by the charter.

97. **Judicial Powers of the Board.** — Besides its strictly legislative duties, the principal board has certain judicial powers. As a court of impeachment it can try and remove township and school district officers who are guilty of neglect of duty or of malfeasance in office; audit the accounts of those who receive or pay out any of the public money; accept, reject, or require new bonds of the treasurer and other officers; and confirm or reverse the decisions of the highway commissioner, and of the subordinate boards upon appeal.

98. **Board of Registration.** — In order that no one may vote at the township meeting, or at any election, unless he be qualified, the laws provide for a registry of all the voters. It is the duty of this board of registration, just before an election, to give every elector an opportunity to have his name recorded in a book kept at the office of the township clerk. In case any one offers to register whose right to do so is doubtful, the board may require him to make oath as to his qualifications.

99. **Board of Election Inspectors.** — This board has general charge of the elections, receives the ballots, counts them, and declares what officers are legally elected. The township board, assisted by one or more clerks, usually acts as a board of election inspectors; but if any of its members is a candidate for office, he is thereby disqualified, and some one else is selected in his place, at the opening of the polls.

100. **Board of Health.** — It is the duty of this board to devise measures for the protection of the health of the inhabitants of the township. It makes regulations to prevent the spread of contagion, respecting burial grounds,

and for the abatement of nuisances. It appoints the health officer, who must usually be a reputable physician, if one can be obtained in the township; audits his accounts both for professional services and for necessaries furnished the sick; and gives public notice to travellers of infected places.

101. Board of Review. — One of the most important duties which any officer has to perform is to assess the taxes. It is the duty of the assessor (89) to estimate the value of each man's property, and he should be careful to treat all alike. In order that no injustice may be done, a board of review is established, before which, on certain days, any taxpayer who feels himself aggrieved may appear; and if too great a valuation has been placed upon his property by the assessor, it will be reduced by the board.

102. Board of School Inspectors. — The school district may be a subdivision of a township, in which case there is a board of school inspectors; or it may include the whole township, and, if so, the school board usually acts in that capacity. The schools are for the most part independent of the township government, but the latter exercises some control in matters which do not pertain directly to instruction. This board has power to select school sites, to appoint district officers to fill the vacancies when the local board fails to do so, and must make such reports to the county superintendent, to the state superintendent, and to the township board as are required by law. This board also has power to divide the townships into districts of suitable size, and to alter their boundaries as occasion demands. If any one feels

aggrieved at the decision of the board of school inspectors, he may appeal to the township board.

103. Under the County System. — In those states where the county system prevails, the legislative and judicial duties performed by the township boards are performed by the board of supervisors and by county officials. The former acts as a board of review, appoints the election inspectors for the various precincts, canvasses the returns made by the election inspectors, whose duty it is to receive and count the votes, and issues certificates of election to the successful candidates. The county clerk keeps a "great register," in which must be recorded the names of all who are allowed to vote in the county; the county school superintendent takes the place of the board of school inspectors, and the county health officer performs the duties of the board of health.

TOPICAL ANALYSIS

1. Vesting of legislative powers.
2. Legislative powers of the township board.
3. Judicial powers of the township board.
4. The registration of voters.
5. Inspectors of election.
6. The board of health.
7. The equalizing of assessments.
8. The board of school inspectors.
9. Treatment of similar subjects under the county system.

QUESTIONS AND EXERCISES

1. How may a school trustee be removed from office for neglect of duty?

2. Frame a resolution to prevent cattle from running at large, and enact it into a by-law.

3. Organize a town board, prefer charges, and try a school trustee.

4. Upon what principle does the township pay for the care of the poor?

5. At what proportion of its true value is the property of this township assessed?

6. Would there be any injustice in assessing property at its full value?

7. Upon what principle may an owner be forced to sell the ground for a school site?

8. Why does the town board sometimes remit the taxes of a poor widow?

9. State a case in which a county superintendent of schools would act judicially.

10. Frame a resolution of a board of health declaring a quarantine.

X

THE CHOICE OF TOWNSHIP OFFICERS

ELECTION DAY

"Who serves to-day upon the list
Beside the served shall stand;
Alike the brown and wrinkled wrist,
The gloved and dainty hand.
The rich is level with the poor,
The weak is strong to-day,
The sleekest broadcloth counts no more
Than homespun frock of gray." — WHITTIER.

104. Candidates. — As the business of the township is carried on by officers chosen by the electors, it is necessary that some way be provided for their selection. Undoubtedly only the ones best qualified to discharge the duties of the offices to be filled should be chosen; but it often happens that there are several who are well qualified, and a preference must be expressed. A few days before the election a number of the voters come together and make up a list containing a candidate for each office. Such a meeting is called a "caucus," and may be summoned by any one (257). Usually there are at least two caucuses, corresponding to the two great political parties; but often politics has nothing to do with the township election. The lists made out at the caucuses

are printed upon one sheet, and placed in the hands of the election inspectors.

105. **Preparation for Voting.** — Generally on the Saturday before the day of election the board of registration (98) holds a meeting at the town hall, where every one who wishes to vote must cause his name to be entered upon the poll book. If the board should so require, the applicant must make oath as to his qualifications. On election day the registry is placed in the hands of the board of election inspectors, and no one is allowed to vote whose name is not found upon the roll, unless he will say under oath that he was prevented from having it entered by some unavoidable cause. A new registration of all the voters must be made at regular intervals.

106. **The Polls.** — The place where the election is held is called the "polls," from an old German word meaning a head. On the morning of the election the board of election inspectors take their seats at a table within a railing, the clerk produces the ballots and the registry, and at the appointed hour an officer declares "that the polls of this election are now open." The polls having once been opened, are kept open for the reception of ballots as long as the law requires, when they are declared to be duly closed. An adjournment for one hour at noon is sometimes permitted.

107. **Method of Voting.** — Methods of voting vary in different states. The Australian ballot system now generally used is somewhat as follows: When an elector wishes to vote he enters within the railing, and a poll list is examined to see if his name is upon it. If it be found, he is handed a ballot by one of the election inspectors. All of the

ballots have previously been counted, and each one contains the initials of an inspector, who must account for all of the ballots when the polls are closed. If the elector does not read the English language, an inspector will assist him; and if he cannot speak English, an interpreter will be provided.

108. Preparing the Ballot. — The elector now steps within a booth, where he finds a pencil, with which he puts a mark in a circular space at the head of the list he wishes to vote. If he desires to vote against a particular candidate in the list, he simply crosses off his name; but if he wishes at the same time to vote for the opposing candidate, he puts a cross in a space opposite that name. He now leaves the booth and hands his ballot to another inspector, who deposits it in the ballot-box. His name is now entered upon two rolls prepared for that purpose, and he passes without the railing.

109. Challenges. — In order to prevent fraudulent voting and thus preserve the purity of the election, challengers are appointed whose duty it is to object to the casting of a ballot by any person whose right to do so is open to a reasonable suspicion. When any one is thus challenged one of the inspectors reads to him the qualifications of an elector, and he is required to declare upon oath that he possesses all of them. He is then allowed to deposit his ballot; but if he should swear falsely, he may be punished for perjury (167).

110. The Canvass. — Immediately upon the closing of the polls the board of election inspectors becomes a board of canvassers, and at once proceeds to count the votes for each candidate. This is done publicly, and when the

result of the balloting has been ascertained it is declared publicly by some member of the board, after which it is entered by the clerk in the records of the township. The ballots and the poll lists are then deposited in the ballot-box, which is locked and sealed, and so remains until the next election.

111. **Majority and Plurality.** — It not unfrequently happens that a candidate is elected to an office, although he does not receive a majority of all the votes cast. This may always happen where there are more than two candidates for the same office. A majority is where the candidate receives more votes than all his competitors; a plurality is where he receives more votes than any one of his competitors, but less than a majority.

112. **Qualifying as an Officer.** — When a person has been duly elected to an office, and has been properly notified of that fact, he must file his acceptance with the clerk. When he does this he must also subscribe to an oath that he will support the Constitution of the United States, the constitution of his own state, and faithfully perform the duties of the particular office to which he has been elected. He must also, when the law requires it, file with the clerk a bond with good and sufficient sureties, who will agree to indemnify the township against any loss that may occur by reason of any neglect or wrong-doing on the part of the officer.

113. **Assuming the Office.** — After taking the oath of office and the filing of his acceptance and bond, often a few days, and sometimes several months, intervene before the officer is entitled to take possession of the office. Until this event actually happens he is called an "officer

elect." When, however, the time does arrive, the officer in possession must turn over all the records and whatever else belongs to the township to his successor, who is now responsible for its safe keeping.

TOPICAL ANALYSIS

1. Selecting the candidates; the caucus.
2. Enrolling the voters.
3. The opening of the polls.
4. Obtaining a ballot.
5. Preparing a ballot.
6. Challenges.
7. The board of canvassers.
8. Majority and plurality.
9. Qualifying as an officer.
10. Assuming the office.

QUESTIONS AND EXERCISES

1. Take your class to the polls for an observation lesson.
2. What is an instruction ballot?
3. If the voter spoils the ballot given him by the inspector, can he obtain another?
4. What is a "distinguishing mark"?
5. What is the difference between "a straight," "a split," and "a mixed" ticket?
6. Can a person run for an office to which he has not been nominated?
7. How may one lose his vote when there are two offices of the same kind on each ticket?
8. What is the origin of the word "caucus"?
9. Should politics have anything to do with local elections?
10. Under the county unit system is it always feasible for the board of election inspectors to declare the result in the judicial township?

XI

PRIVATE PROPERTY

114. Nature of Private Property. — Private property includes not only what a man has produced by his own labor, but also what he has obtained by fair means from any other source, as by purchase, by gift, or by inheritance. Some would include intellectual acquirements, others would not. One may acquire property by employing the labor of others, provided he has capital. This term will include horses, money, machinery, the books of the professional man, or anything else which may be used as an instrument of production. Capital is always the product of past labor saved.

The right of private property is founded in nature. Originally the thing produced belonged to the producer; and the idea of labor expended upon its production underlies, directly or indirectly, the property rights to anything. A man naturally has the right to own, control, and dispose of the fruits of his own labor. By "fruits of labor" is meant the comforts and conveniences of civilized life.

115. Definition of Labor. — Labor has been defined as the "voluntary effort put forth by man to secure the objects of desire, which is another way of saying "the comforts and conveniences of civilized life." Labor of some kind, mental, physical, or either is a necessity, and every

man has the right to be protected in performing it (12:2). The food which sustains us, the clothes we wear, the books we read, are each the products of labor.

116. **Division of Labor.** — We are not all born with the same tastes, nor with the same capacity for labor. One man cannot endure the close confinement of the store or of the office, but delights in the open air and in the physical effort required upon the farm or in the workshop. This is fortunate; for, as the world needs the product of all kinds of labor, we can each indulge our tastes to a certain extent, and yet at the same time earn a living.

117. **Exchange.** — A person would enjoy few of the "comforts and conveniences of civilized life" if he could not trade off the articles which he produces for something which another man has. This is called exchange. When the exchange is direct, as wheat for shoes, it is termed barter. When wheat is given for money, it is a sale. The laws of the country aim to make exchanges as simple as possible, consistently with safety. This is for the encouragement of trade.

118. **Commerce.** — When the exchange of goods for goods, or goods for money, takes place between individuals residing in different states or countries, we have commerce. Goods sent out of a country are termed exports; those brought in from a foreign country are termed imports. A duty is a tax levied upon imports. A tariff is a list of dutiable goods, specifying the amount to be collected upon each. The revenue of the national government is largely derived from duties upon imports.

119. **Money.** — In a sparsely settled country, where the wants are few, much of the business of exchange is carried

on by barter; but where the population is more dense, this is impossible. Every purchase and sale implies the use of money, which is called the medium of exchange. Anything can be used as money. The North American Indians employed wampum and beaver skins; the early colonists of Massachusetts Bay once made Indian corn a legal tender; and the settlers of Virginia expressed their measures of value in pounds of tobacco. Gold and silver are best adapted for money metals, and their use for this purpose is universal. They are desirable for personal ornaments; are the most imperishable of substances; are portable, and contain great value in small bulk; are easily divisible without loss; and their degree of purity may be ascertained and certified to by the public authorities.

120. **The Coinage.** — In order that even gold or silver may pass freely as money, the coins made from it must be a legal tender, *i.e.* every one must be compelled by law to accept the coins in payment of a debt. The right to coin money and to make it a legal tender belongs exclusively to the national government. The silver dollar and all the gold coins, if they are of full weight, are a legal tender to any amount: the fractional silver coins, up to ten dollars; pennies and nickels, in sums not exceeding twenty-five cents. For the coinage of this money the United States government has established four mints, the oldest being at Philadelphia. Any one may take gold to the mint and have it coined into money by paying for the alloy; but this is not true of the other metals. All of the gold and silver coins consist of ninety per cent pure metal and ten per cent alloy. The gold dollar contains 25.8 grains of standard gold; and the silver dollar 412.8 standard silver. The

coinage began in 1795, and the silver dollar was made the unit; but in 1873 silver was demonetized and now the gold dollar is the sole standard.

121. **Paper Money.**— In all business transactions requiring the use of ready money, where the amount involved is less than five dollars, silver is preferred to gold; but in larger transactions the reverse is true. For the payment of sums of even a few hundred dollars gold coins are also too heavy for convenience, and to obviate this difficulty paper money has been invented. Five kinds of paper money are issued by authority of our government,—greenbacks, national bank notes, treasury notes, gold certificates, and silver certificates. The first of these only is a legal tender; but as all the others are amply secured by the national government, they readily pass for money.

122. **Value of Paper Money.** — As gold and silver coins can always be reduced to bullion and then used in the arts, it follows that this kind of money will always have a commercial value, depending upon the state of the market. Considered as mere paper, a printed bill has no value; and yet in this country, at the present time, we readily exchange our labor and our products for our paper currency. We have no hesitation in doing this, because of our faith in the promise of the government to redeem its notes with gold and silver. As this quality of exchangeability rests entirely upon the promise of the national government, the value of paper money will always fluctuate with the credit of the government. The bills issued by the Continental Congress became utterly worthless, because no one had any confidence that they would be redeemed. The same statement is also true of the bills

issued by the Confederate states; and during the Civil War the credit of the United States was so poor that its greenbacks were worth only fifty cents on the dollar.

123. **Taxation.** — The right of private property being an absolute one (8), it follows that not even the government may take my possessions and give them to another, though it should offer to pay me. Still, as a state cannot exist without money to meet its obligations, and as the life of the state is of far greater importance than the right of any individual, the government would be justified in taking any portion of my property to pay its own expenses. The exercise of this right is a necessity, and is called "taxation." A direct tax is where the person against whom it is levied, or upon whose property it is assessed, actually pays it. An indirect tax is where the person against whose property it is assessed pays it, but recovers the amount by an added charge to the consumer. Land, poll, or income taxes are of the direct kind; duties on imports are indirect. To be lawful a tax must be levied for some public purpose, as the payment of public officers; but this purpose may also be the support of schools, of the poor, or the payment of pensions. These expenditures are either necessary, or such as rest upon considerations of public policy alone, and both justify a tax. When, however, the object is not public interest, but private advantage, it ceases to be taxation, and becomes plunder. The courts would not permit a tax to be collected where the purpose was to establish a person in business.

Closely connected in principle with taxation is the right of *eminent domain.* "Whenever it becomes necessary, for the public good, to open a street, construct a canal, charter

a railroad, lay out a park, or to perform any other similar act in the interest of the public, and the owners of the property refuse to sell, or ask an exorbitant price for their land, the state has the right to condemn such property to that public use, and any court having due authority may compel its surrender. This is called the right of eminent domain." In this case, however, the owner must be paid what his property is reasonably worth, the amount being usually determined by a jury.

TOPICAL ANALYSIS

1. Nature and origin of private property; capital.
2. Definition of labor.
3. Division of labor.
4. Exchange.
5. Commerce.
6. Articles used for money.
7. Gold and silver.
8. Paper money.
9. Credit the basis of value in paper money.
10. Taxation; eminent domain.

QUESTIONS AND EXERCISES

1. What is an income tax? A tax for revenue only?
2. Why are gold and silver coins made nine-tenths fine?
3. In a fire $2000 in silver dollars is melted; what is the mass of silver worth to-day?
4. How does a tax differ from a fine? From a license? (Cooley, Const. Lim., §§ 201, 584.)
5. From a tax receipt find the valuation of this school district.
6. What is meant by the expression "16 to 1"?
7. Who is a "tax-dodger"?
8. In what way does a taxpayer receive his compensation?
9. Who is a "single taxer"?
10. Of what two metals is the alloy in a gold coin composed?

XII

REAL PROPERTY

124. **Land.** — All property is divided into two classes, — real and personal. Real property is such as is permanent, fixed, and immovable in its nature. Land is always regarded as real property, and ordinarily includes whatever is erected or growing upon it, as well as whatever is contained within its surface, as minerals and the like. The term "land" also includes any body of water, having reference to the land under the water.

125. **Buildings.** — If the buildings erected upon the land be permanent in their nature, and especially if they be placed upon stone foundations, they become a part of the realty. This is always the case if the owner of the soil erects the building himself; but if he permits another to do so, under an agreement that the building may be removed, it then becomes personal property. If a stranger erects a building upon another's land without his consent, it is a part of the realty.

126. **Waters.** — One who owns the land on both sides of a stream owns the whole bed; if he owns the bank on one side of the stream, he owns to the middle of the stream. The owner of the bed of the stream, however, does not own the water that flows over it, but simply the right to use the water as it flows along. The consequence

of this is that no proprietor of the bed has a right to use the stream to the prejudice of another whose land borders upon the stream. In those states where irrigation is practised it is generally held that the use of the water for this purpose belongs to the first appropriator.

127. Wild Animals. — By reason of the ownership of the soil, the proprietor has a qualified property in the wild animals found upon it, and in the fish in the stream. A stranger has no right to go upon another's land, without permission, to kill game or to take fish; and if he does so, the game so killed, or the fish so caught, belong to the owner of the soil. If a hunter starts game on A's land, pursues it upon B's land, and there kills it, the game belongs to the hunter. Finding bees in a tree upon another's land gives the finder no right to the bees or to the tree.

128. Kind of Interest. — Real property is generally called real estate; but the latter term refers rather to the *kind* of interest a person has. It may be full ownership, in which case the owner may dispose of it as he sees fit. It may be a conditional interest, to end with the happening of a certain event. The tenant may have the right to occupy the premises for a definite period, as for five years; or for an indefinite time and at the will of another.

129. Freeholds. — An estate of inheritance is one that goes to the owner's heirs at his death. A life estate is where a lease of land is made to a man to hold for the term of his own life, or for the life of another, or for more lives than one. These estates are called freeholds, because they formerly required actual possession of the soil. To be considered a freehold, an interest in land must be

indeterminate as to time, and immovable as to place. In some states only freeholders can sit upon juries, or vote upon certain questions.

130. **Dower and Courtesy.** — A dower interest is the right which the widow has to the use of one-third of all the real estate which her husband owned at any time during the marriage. In those states where women are allowed to vote at school elections, but where no one can vote to raise money, or hold an office in the district unless he or she be a freeholder, a dower interest would enable the widow both to vote and to hold the office. These rights do not attach during the life of the husband.

In some states the husband, on the death of the wife, is entitled to the use of her estate during his own lifetime. Generally this is not the case unless a lawful child has been born to them which could have inherited the mother's property. Like a dower interest, an estate by the courtesy is a freehold.

131. **Community Property.** — In California and a few other states a distinction is made between property acquired before marriage by either husband or wife, and that acquired after marriage. The former is called separate property; the latter, community property. All property acquired by the husband, or the wife, or the minor children during the marriage, except what is acquired by gift, devise, or descent, or earned by the wife or minor children while living separate and apart from the husband, is deemed the common property of the husband and the wife. While the husband and wife live together, the former, for a valuable consideration, may dispose of the community property as he sees fit, except in case of the homestead. Upon the

death of the wife the whole belongs to the husband. If the husband should die first, the half goes to the wife and the remainder to his heirs, unless otherwise disposed of by will. The details will differ in the several states using this plan.

132. **Title to Real Property.** — Title means the same as ownership (139). It is not the same as possession, for a man may possess what he does not own, and own what he does not possess. One may become the lawful owner of real property either by purchase or by descent. Purchase means the acquiring of property in any other way than by descent.

The title may be transferred in either of two ways. First, by act and operation of law, as in the case of the owner dying without a will, the property will go to his heirs. Second, it may be transferred by the owner's personal act, as by gift, by will, or by sale.

133. **Deeds.** — Every transfer of the title to real property must be by an instrument in writing, called a deed. A quit-claim deed is one that transfers whatever interest the owner may have. A warranty deed conveys an absolute title, and also contains a clause whereby the grantor agrees to pay the grantee for any loss which he may sustain, if the grantor's title should prove not to be good. Unless the wife signs the deed, she will retain her dower interest; so, also, the husband must sign the deed in those states where he has the right of courtesy. The grantor says under oath that his signature was made by his free act. He does this usually before a notary public, an officer appointed by the governor for that purpose.

134. **Mortgages.** — It often so happens that an owner does not wish to dispose of his land entirely, but desires to

raise some money by pledging it as security. Frequently also a purchaser of land is unable to pay the whole amount of the purchase price. In each of these cases the usual plan is to secure the repayment of the money by giving a mortgage. Unless the consideration be the purchase price, the wife must sign the mortgage in order to convey her dower interest. A deed, though absolute in form, if given merely as security and with no intention of conveying the title, will be treated by the courts as a mortgage.

A mortgage is in the form of a deed, with a condition added. The condition is that, if the money which the mortgage was given to secure shall be repaid with interest at a time specified therein, the title shall not pass. A separate paper in the form of a note or bond always accompanies the mortgage, and is the real evidence of the debt owed by the mortgagor. The mortgage itself is simply a security.

135. **Foreclosure.** — Formerly, at the time specified in the mortgage, if the money was not repaid as agreed upon, the mortgagee could take possession of the land; but this custom has long since been changed, and the mortgagee must foreclose. Foreclosure is a method by which the land is appropriated to satisfy the debt. The method differs in the various states; but the mortgagor is always given further time in which to redeem his pledge. This right to redeem is called the "equity of redemption." If the mortgagor sees fit, he may disregard the security entirely and sue the mortgagee upon the note. Or, as is more commonly done, he may foreclose the mortgage, sell the property, and then obtain a deficiency judgment if he does not receive enough from the sale to satisfy the debt. If he receives

more than enough to pay the debt, the excess goes to the mortgagor.

136. **Registration.** — It is greatly for the interest of any one having a legal claim against real estate that the writing which shows the character of the claim should be recorded. This record is a notice to all the world of the interest you have, and no unrecorded instrument from the same person can affect your title. One should never purchase any real property, or take a mortgage upon it, without having the title examined by some competent person. This examination is made comparatively easy by means of abstracts of title, which are generally merely indexes showing the book and page upon which any written instrument may be found which in any way affects the title. In some states it is the custom to obtain a certificate guaranteeing the title (154). As in a deed (133), the value of this guaranty will depend upon the responsibility of the guarantor.

TOPICAL ANALYSIS

1. The nature of real property.
2. Buildings as real property; as personal property.
3. Water rights.
4. Property in wild animals; in fish.
5. Full ownership; a conditional interest.
6. Nature of a freehold interest.
7. Dower and courtesy.
8. Community property.
9. Title to real property; methods of transfer.
10. Deeds; signature of the wife.
11. Mortgages; the note which accompanies a mortgage.
12. Foreclosure; a deficiency judgment.
13. Registration; abstracts of title.

QUESTIONS AND EXERCISES

1. Why is a first mortgage better than a second?

2. In this state must the husband sign the deed to his wife's property?

3. For how long a period does the equity of redemption extend in this state?

4. When is a quit-claim deed as good as a warranty deed?

5. From your stationer procure a mortgage blank and draw a mortgage on a farm for $500.

6. A intrusted $1000 to B with which to buy a house and lot for him. B bought the property, but took the deed in his own name. Could he hold it as against A?

7. If you should lose the deed to your house and lot, where might you procure a copy?

8. If a man should find $1000 in gold buried upon his farm, would he be the owner of it?

9. What is the test whether the animal is wild or domesticated? What effect does branding have?

10. What other liens besides a mortgage may there be on real estate?

11. Give an instance where the title to land was acquired by adverse possession (213).

XIII

PERSONAL PROPERTY

137. Varieties of Personal Property. — The different forms which personal property may assume are well-nigh endless. The clothes we wear, the food we eat, the tools of the mechanic, the books of the lawyer, the goods in the store, the flocks in the field, the money in our pockets or in the bank, are each and all of this class. But besides these objects of the senses, the possession of which we actually have, there is a vast amount of personal property which one may have only the right to possess at some future time, as money due upon a note or bond. Now it often happens that we are unable to get possession of such property except by an action, or suit at law; and hence everything of this character is called "a chose (a thing) in action."

138. Goods and Chattels. — Personal property includes everything of value, not a freehold (129). It is called "personal" because it is movable, and may attend the person of the owner. The term "chattels" is often applied to this kind of property, probably because in early times wealth consisted almost entirely of cattle. The term "goods" is generally understood to apply to inanimate objects, as household furniture and the like; while chattels include living objects as well.

139. Title by Possession. — Ownership is the right by which a thing belongs to one person, or set of persons, to the exclusion of all others (132). Title to real property, or the right of ownership, is shown by written instrument; title to personal property is shown by possession. It is not always certain that he who has the possession of a chattel is the real owner; but, as a rule, such is the case. There is no registry to the title of personal property as there is to that of real estate.

140. Title by Contract. — Our title to every species of personal property which we have merely the right to enjoy at some future time is founded upon contract. A contract is an agreement, upon sufficient consideration, to do or not to do a particular thing. One who is able to transact business upon his own account (58) may make any kind of a contract he sees fit, unless it be forbidden by law, or impossible to perform. The most important principle which underlies the doctrine of contracts is that we must do as we agree. If this were not the case, no one would consent to render any service for another, because the other could refuse to pay him. And no one would pay in advance, because the payee could then refuse to render the service.

The liberty of contract has been declared by a learned judge to be "of all the rights of persons the most essential to human happiness." Every kind of business is a system of contracts, and commercial law is in great part only the law governing all contracts. Thus every sale of goods, and every note, draft, or indorsement, is a contract; every act done by a clerk or other agent in his business is but the carrying out of the contract originally made with his employer.

141. Commercial Paper. — One of the most common forms for a contract to assume is that of a draft, a check, or a promissory note. This is called commercial paper, because in business transactions each circulates as money. In the business world few of the larger transactions are made by actual cash payment. If a merchant in Detroit wishes to pay an importer in New York for a bill of goods, he deposits his money in the Detroit bank, purchases a draft on New York, and sends it to his creditor. If the creditor lives in Detroit, the debtor gives him his check.

142. Promissory Notes. — It often happens that a man has no ready money to deposit in the bank, but he does have property, which gives him credit. In this case, instead of making use of a draft or check, he may give his note. A promissory note is a written agreement, signed by the maker, to pay a certain sum of money, at a certain time, to a person named therein, or to his order, or to the bearer. He now takes this note to some one who is willing to make him a loan, gives it to him, and receives the money. Sometimes the borrower will get a responsible person to write his name upon the back of the note, and he will then take it to the bank where it will be discounted. Such a note is called "an accommodation paper." The one who writes his name upon the back is called an indorser, and he will be responsible to the bank for the payment of the note in case the maker fails to keep his promise. Some banks will not loan money upon a promissory note unless it is accompanied by other security, as a bond or a mortgage. The bond or mortgage in this case is called collateral security.

143. Quality of Title. — The title to personal property, as well as to realty, may be absolute or qualified; it may be good, bad, or doubtful. A thief may have possession of goods; and yet he has no title, for he does not have the right of possession. One may borrow a horse, and thus have the right of possession; but yet he is no owner. When, however, the actual possession, the right of possession, and the right of property unite in one and the same person, such person is the absolute owner of the thing, and can dispose of it as he likes.

144. Transfer of Title by Sale. — When one who has personal property, but no money, desires to turn the property into money, he may sell it, that is, he may transfer his absolute title in the thing for a price in money. Ordinarily the sale is accompanied by delivery, especially when the article is fully paid for; but this is not always the case. Sometimes the vendor, or the one who sells, acknowledges in writing that he has transferred the title to the buyer, or vendee. This writing is called a bill of sale.

145. Chattel Mortgages. — But sometimes the owner of personal property desires to retain his ownership in the article, and yet to use it as security upon which to borrow money. This he may do by delivering the article to his creditors upon condition that it shall be returned when the money is repaid. The article is then said to be pawned. Or one may desire to retain possession, and also to use the property as security. In this case the owner executes a mortgage, which acknowledges that the property shall belong to the mortgagee, if a certain sum mentioned therein be not paid at a certain date. The mortgagee then takes the mortgage to the township clerk, or to the

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county recorder, who places it on file, when it becomes a notice to every one of just what interest the person in possession has.

TOPICAL ANALYSIS

1. Varieties of personal property; a chose in action.
2. Goods and chattels.
3. Title by possession.
4. Title by contract; the liberty of contract.
5. Checks and drafts.
6. Promissory notes; accommodation notes; indorsers; collateral security.
7. Quality of title.
8. Transfer of title by sale.
9. Chattel Mortgages.

QUESTIONS AND EXERCISES

1. Is a chattel mortgage of any value if not recorded?
2. Write a promissory note payable to order.
3. Write a bill of sale for a horse with a warranty of soundness.
4. How does a check differ from a note?
5. What is the usual sign of a pawnbroker's shop?
6. If a promissory note be lost, must the owner lose the debt?
7. The law requires that a contract, where the amount involved is over $100, must be in writing. Why?
8. What is the meaning of "sufficient consideration" in the definition of a contract?
9. Why do bankers dislike to take an accommodation note?
10. Why must an indorser upon a note be notified of its non-payment at maturity?

XIV

BUSINESS ENTERPRISES

146. A Business Enterprise. — The expression, "a business enterprise," generally conveys to our minds an undertaking by one or more persons to buy, sell, manufacture, or produce something of real utility. It involves the employment of capital and labor, both skilled and unskilled, and conveys the idea of special knowledge and responsibility on the part of the proprietors and managers beyond the ordinary.

But there is a secondary and broader meaning to the expression (1). In every country possessing a high degree of civilization there are to be found certain associations of individuals which, according to the definition given, could not be classified as business enterprises. They neither buy, sell, manufacture, nor produce anything, and they give employment only to a very limited amount of labor. Their real purpose is to distribute reliable information to those who are willing to pay for it, and are thus exceedingly useful in bringing capital and labor, employer and employee together. As society is at present organized, such associations are indispensable.

147. A Partnership. — If you will take the trouble to read the signs over the stores and upon the manufactories

in any city, you will find that very few of them bear the name of a single individual. Even when they do, an investigation will probably show that, in the majority of cases, a single person is not the sole owner. One reason for this is that both capital and skill are necessary to conduct successfully any business, and it rarely happens that any one man possesses both in sufficient degree to enable him to carry on any very large enterprise upon his own responsibility. The simplest form in which two or more persons may unite in any lawful business their labor, skill, or property, or any combination of them, for profit is called a partnership. The intention of making a profit is essential.

The partnership may be formed by a simple oral agreement, or it may be in writing; as to duration, it may be indefinite, or it may be restricted to a certain period of time; as to responsibility, it may include all the property of each partner not exempt from execution (39), or it may be limited to a certain sum as to one or more of them. A partnership may be dissolved by any one of the partners, and if the other members of the firm object, a court will decree a dissolution and require an accounting. The death of any one of the partners dissolves the firm. If a partner sells his interest, the purchaser does not become a member of the firm, unless the remaining partners consent.

148. **Corporations.** — When the volume of business of the partnership has grown to very large proportions, and often when it has not, the form is frequently changed to that of a corporation. In organizing any kind of a corporation where the object is profit, a certain amount of money must be subscribed, which is called capital, or capital stock.

This "stock" is divided into a number of shares, and the owner of each share is a stockholder. These shares may be bought or sold like bonds, mortgages, or commercial paper. The holder of a share is a member of the corporation, and has a right to vote at all the meetings of the stockholders. Thus the individual members may change, but the corporation always remains the same. The corporate form has some advantages, which should be remembered.

1. *Powers.* — A corporation, being a fictitious person (76), has no natural rights whatever. All of its powers are derived solely from its charter, which must conform strictly to the acts of the legislature under which it is incorporated. It can transact no business which the charter does not authorize, anything else being beyond its powers. It is for this reason that a railroad corporation cannot engage in banking, nor one organized to buy and sell goods, in the work of manufacturing them. As it has no natural powers, so a corporation can have no natural death, but may possibly live forever. The term of its existence in most cases, however, is limited by law.

2. *Management.* — In the management of the affairs of the partnership each partner has a voice; but not so with every shareholder. He may indeed vote at the annual meetings at which the directors are elected, the influence of his vote being determined by the number of his shares; but aside from this all the business is done by the board of directors, the officers, and the agents of the corporation. The board of directors holds regular meetings, usually once a month, where the more important measures are passed upon. The acts of the officers derive their validity

from the charter and from the resolutions of the board (47, 95).

3. *The Shareholders.* — While the shareholder with only a few shares has little to say in the management of the business, nevertheless he has some advantages over a partner. Individual partners are personally responsible for all the debts of the firm; the liability of a stockholder is always limited, and generally to the amount of his investment. If a suit be brought for the recovery of a partnership debt, the name of each partner is included in the complaint (178), and they are described as doing business under the firm name. If a judgment be obtained, an execution (186) may be levied not only against the assets of the firm, but also against the property of each partner; and, by taking proper measures, the judgment may be kept alive for years. If any shareholder thinks the business of the corporation is being conducted in an unlawful manner, he may have the acts complained of reviewed by a court.

149. **Joint-stock Companies.** — A joint-stock association is neither a partnership nor a corporation, but is an organization which has some of the features of both. Its object is always profit, it has a common fund, and, in the absence of any law to the contrary, each member is personally liable for all the debts. Like a corporation, however, the shares are transferable, the business is carried on by officers and agents, and the death or withdrawal of a member does not dissolve the association.

Joint-stock companies are of great assistance in promoting new business enterprises, for as the money actually paid in is but a small per cent of the face value of the shares, there is a prospect for a profit to be derived from a

rise. The method of starting a new enterprise by means of a joint-stock company is somewhat as follows, the one who engineers it being called a promoter. Two persons, we will say, own a group of copper locations, which they hope will develop into valuable mines. Having no money of their own, they organize a stock company with one hundred thousand shares of the par value of $1 each, turn in their locations as payment for a majority of the stock, and secure the services of a promoter, who sells the stock at say twenty-five cents per share. With the money thus obtained, the company now develops the mines, and if more is needed, an assessment is made. As the work progresses, the value of the stock rises or falls as the prospects for making a profit from the mines increase or diminish. Sometimes the shares come to be worth several times their par value, but often they turn out to be worthless.

150. **Stock Exchanges.** — A stock exchange is a regularly organized association for the purchase and sale of stocks, bonds, and government securities. One or more of them is to be found in nearly every large city, and their aggregate sales are great almost beyond the imagination, those of the New York Exchange alone for one year exceeding $1,000,000,000. The New York Exchange is located upon Wall Street, the membership is limited to eleven hundred, as much as $80,000 has been paid for a single seat, and none but members are permitted to do business upon the floor. There are two classes of members, the first of which operate exclusively on their own account, and are called "bulls" and "bears"; the second buy and sell for others upon commission, and are termed stockbrokers. A curbstone broker is a dealer in

stocks, bonds, and other securities upon commission, but who is not entitled to trade upon the floor of the exchange. Railroads and other enterprises requiring the expenditure of vast sums of money sell their securities through these exchanges. At the same time a certain degree of protection is afforded the investor, as no stocks are listed upon the exchange until they have been pronounced worthy by a competent committee.

151. **Banks.** — A bank may be defined as an institution for receiving, loaning, and taking care of money. Sometimes they also issue money, but in this country that power is confined to the national banks. A savings bank is one which receives money in small amounts and pays interest upon it. Interest is a payment made for the use of money. Most banks pay interest upon deposits left for a certain length of time; but savings banks do not always make this restriction. The money you leave with the bank is called a deposit. The banker will give you a certificate, or will make an entry upon your bank book, either of which is a simple acknowledgment that the bank is indebted to you. It is only a contract; and if the bank should refuse to fulfil its agreement, you would have to collect the amount by a suit at law.

The services which the banker renders to productive industry are very great. He receives from those around him the sums of money, little and large, which would otherwise be idle, and loans them to those who wish to engage in business. The lender is assisted, for he receives interest upon his money; the borrower is accommodated, for the bank furnishes a convenient place where he may obtain money to carry on his business. The bank derives its

profit from the interest upon the capital stock, upon deposits which draw no interest, and upon other deposits which draw only a small rate per cent. It is always a suspicious circumstance when a bank is willing to pay a high rate of interest. If it were not for the banks, all the great manufacturing and commercial interests would soon be in the hands of the great capitalists; for only they could obtain the money to pay the employees and to meet the other expenses.

152. Insurance. — Insurance is a contract whereby, for a certain sum of money called a premium, one party agrees to assume another's risk. The written contract which the company issues is termed a policy. There are four kinds of insurance, — life, fire, accident, and marine. The companies differ both as to the nature of their organization, their methods of conducting business, and the character of the policies they issue. As to their organization, they may be divided into old line, mutual, and those combining both features. Old-line insurance is where the premium is at a fixed sum per annum. In mutual insurance the premium depends upon the losses which are incurred, and is paid in assessments. As to the kind of policy issued in life insurance, we have the straight life and the endowment plan, which embraces a savings bank feature. The amount of each premium in life insurance is based upon the expectancy of life, which may be learned from tables prepared by an actuary.

The total amount of the various kinds of insurance carried by the people of this country runs into the thousands of millions of dollars. Almost every business man carries some insurance, and generally those who conduct

great enterprises take out large policies. The benefits which they derive consist in the payment of actual losses, and in the sense of security. Knowing that the most destructive fire will not deprive him of all of his capital, and that, in case of his death, his family will receive the protection afforded by his life insurance, the business man will assume a responsibility not otherwise to be thought of, and the world will be the gainer for his enterprise.

153. **Credit Agencies.** — Commercial agencies are organizations formed for the purpose of finding out the financial standing of every one who seeks to obtain credit. It is not considered safe to do a large credit business even in a small community; but where, as in the case of a wholesale merchant, some of his customers may live a thousand miles away, the danger from loss becomes very great. To furnish the information upon which a merchant safely relies, credit agencies have been formed, whose representatives reside in, or visit, every city and village in the land. By means of their reports the financial standing of every one may be known, and thus the scope of business enterprise is greatly increased.

154. **Indemnity Companies.** — Somewhat similar to insurance companies are those organizations which offer indemnity for other losses likely to occur in the transaction of business. Bond indemnity companies have for their object the furnishing of official bonds, and of insuring employers against loss from any dishonesty on the part of their employees. This is a great relief to the one who must otherwise sign an official bond, as there is always some risk for which ordinarily he receives no pay; it is a kindness to the one who must give the bond, as he can pay for what he

must otherwise ask as a favor; and it assists the one who is seeking employment, as he can apply with confidence to a perfect stranger. Of course the indemnity company will look up the applicant's record with great care; and if his life has not been an honorable one, no bond will be given.

Title and guarantee companies are organized to insure titles to lands, and the security which they afford to purchasers is obvious (136).

155. **Building-loan Associations.** — Another organization which benefits the investor and the borrower alike is the building-loan association. Its purpose is to furnish a safe investment, with a good rate of interest, for the wage-earner or for the person with a small income; at the same time it affords the one who has a little money and a steady income an opportunity to become the owner of a home by paying for it in small monthly instalments. They are joint-stock associations, and are sometimes called co-operative banks. The borrower must first pay for his lot, and then the association will advance a portion of the money necessary to build a house; or it will make a loan upon a house and lot for from one-third to one-half its value. The total assets of the building-loan associations of the United States exceed six hundred million dollars.

156. **Employment Agencies.** — An organization often very useful to one seeking work is the employment agency, or intelligence bureau. This is especially true if one wishes to change his location, or is in a strange city. It is the business of these agencies to become informed as to any vacancies, actual or prospective, in their particular line, and to recommend suitable candidates. Sometimes there will be a central office in one of the larger cities,

as Chicago or Boston, and branch offices in other cities, as Los Angeles or Denver. This is particularly true of teachers' agencies. It is a brokerage business, the applicant paying a small fee and a percentage of his salary.

157. **Trusts.** — A trust, popularly so called, is a combination of capitalists for the purpose of controlling the manufacture and output of some productive industry. It seeks to accomplish this by buying up all the factories which manufacture that particular product, and thus a monopoly is secured. If, now, any one should seek to start a new factory, the trust will lower the price below the cost of production, and attempt to drive him out of business. If there is a falling off in the demand for the particular article, instead of reducing the price, the trust will stop manufacturing until the stock on hand is sufficiently depleted to warrant resuming. The advocates of the trust say that it is a benefit, because by reducing expenses it cheapens the cost of production, which is for the advantage of the consumer. The opponents of the trust maintain that it is an evil, because it discourages private enterprise, reduces the demand for labor, and creates a monopoly. A trust is not to be confounded with a trust company, which is organized for quite another purpose.

TOPICAL ANALYSIS

1. A business enterprise ; a combination in aid of it.
2. A partnership ; how formed, dissolution, authority of partner.
3. Corporations, important features : —
   (1) Powers limited by charter.
   (2) Managed by directors and officers.
   (3) Shareholders *vs.* partners.

4. Joint-stock company; promoting an enterprise.
5. Stock exchanges; use to large enterprises and to investors.
6. Banks; the services they render.
7. Insurance; collateral security.
8. Indemnity companies; a title guarantee company.
9. Credit or commercial agencies.
10. Building and loan associations.
11. Employment agencies.
12. Trusts.

QUESTIONS AND EXERCISES

1. Give an example of a partnership in which no capital is required.

2. A partner signs the firm name to a promissory note, given for articles not used in the partnership. Is it good as against the other partners?

3. Point out the differences between a municipal (76) and a trading corporation.

4. In what lawful way may a man have his debts discharged without actually paying them?

5. From a daily newspaper find the value of N.Y. Central R.R. stock.

6. Explain the meaning of "bulls" and "bears" in the stock exchange.

7. A father deposited $1 in the savings bank for his son on his first birthday, $2 on his second birthday, and so on until his twenty-first inclusive. The interest was compounded semiannually at 3% per annum. What was the amount at the date of the last deposit?

8. Show how an endowment policy combines the life insurance and savings bank feature.

9. Why should you hesitate when asked to sign a bond or a note?

10. Debate the following question: —

"Resolved that trusts are a disadvantage to productive industry."

XV

PROTECTION OF PERSON AND PROPERTY

158. Courts as Instruments of Protection. — The laws of any country are extremely watchful in protecting the person and the property rights of every individual under its jurisdiction, the judicial department in time of peace being especially charged with this duty. If a man unjustly withholds any of your goods, a court will assist you in obtaining them; if he should owe you a sum of money, the same court will aid you in collecting it; if he should attempt to deprive you of any of your possessions by force, the laws of the land will sustain you in resisting to any extent necessary; and if he should injure your person, or sully your reputation, the courts will give you damages for the injury inflicted. The protection of person and property is one of the essential functions.

159. Two Kinds of Injuries. — Whenever a person is disturbed by another in the peaceful enjoyment of his absolute rights (4), he receives an injury for which the one who causes it ought to atone. This injury may affect the individual chiefly, and society at large may have little interest in it. For example, it makes little difference to the public if A purchases a horse from B, and fails to pay for it; but it is quite another thing if A steals B's horse. The one is a civil injury; the other is a crime.

160. Two Kinds of Law. — It is a maxim of the law that every wrong has a remedy; and as all wrongs may be divided into two classes, so may we divide the laws of any country into public and private. Public law regulates the administration of state affairs, and prescribes the duties of public officers. It also governs the relations which exist between organized society and the individual, and punishes the violation of any of them as an offence against the state. Private law governs the relations which exist between the individual members of organized society. It is occupied with the rights of individuals, with the modes by which one person may acquire such rights or transfer them to others, and the ways in which personal redress may be obtained when these rights are impaired by fraud or violence. There is indeed a third kind of law, called international, which governs the relations of nations in their intercourse with each other; but this division does not concern us at present (392).

161. Civil Injuries founded on Contract. — Civil injuries are those which affect the individual chiefly, and may arise from a failure to perform the conditions of a contract. The remedy for this would be in damages, the amount to be found out by a suit at law. Examples of civil injuries arising upon contract are very numerous, and might happen upon so simple a case as employing another to work for you. If the price be agreed upon beforehand, you cannot refuse to pay it. If there be no fixed amount, the court will oblige you to pay what the services are reasonably worth. The contract in this case is implied.

162. Civil Injuries founded on Wrongs. — A civil injury may arise from the wrongful act of another whereby

damage ensues either to person or property. If a man borrows my horse, overdrives him, and thus causes the animal to be worthless, I may have an action against the borrower for the value of the horse. So also, if a person circulates false reports about another to the injury of his reputation, he will be liable in damages to the one injured. Suits for all kinds of injuries must be brought within a certain specified period of time, or not at all. The law prescribing this length of time is called a "statute of limitations" (213). In this case the law presumes the damage has been paid, whether this is actually so or not.

163. A Crime. — A crime is an act committed or omitted in violation of some public law commanding or forbidding it. It is a wrong action viewed as affecting the rights, not of individuals, but of society, as a violation of public peace and order. In one sense every violation of a moral law is a crime for which the violator ought to be punished, but the civil law does not so look upon it. A man ought to keep his promise; but if he makes an oral contract to sell his land, or to pay the debt of another, or to purchase personal property above the value of $50, and should fail to keep his promise, this is no crime, and in most states it is not even a civil injury. The law usually prescribes that such contracts shall be in writing.

164. Misdemeanors. — The law does not look on all criminal acts with the same degree of disfavor, as is clearly shown by the character of the punishment. A misdemeanor is a petty crime the punishment for which is a small fine, or imprisonment in the county jail or in a house of correction. The stealing of property worth less than $25 is a misdemeanor, as is also disorderly conduct.

165. **A Felony.** — The term "felony" does not have the same meaning in all states. In Ohio it is used in about the same sense that the word crime is elsewhere. In Michigan it is construed to mean an offence punishable by death, or by imprisonment in the state prison. Even in Michigan, however, the term "felonious" is synonymous with "criminal" and "feloniously" with "criminally." At common law (24) any crime was a felony, if the punishment was forfeiture of land or goods.

166. **Treason.** — The highest crime against society, or the state, is treason, because it aims at the overthrow of the government itself. In all countries the punishment for treason is death. In the United States the crime consists only in levying war against them, or in adhering to their enemies, giving them aid and comfort. (Const. Art. III, § 3.)

167. **Perjury.** — Next to the preservation of its own life the state is interested in having justice properly meted out to its people. This cannot be done unless witnesses in the courts can be compelled to tell the truth. When, in a judicial proceeding, having been duly summoned to testify, a person swears absolutely, wilfully, and falsely, in a matter of some consequence to the point in question, he commits the crime of perjury. This is a felony, the severity of the punishment varying according to the circumstances of the case. It may even extend to imprisonment for life.

168. **Murder.** — The greatest offence which one man can commit against another is to take his life. Murder consists in the unlawful killing of a human being, by a person of sound memory and discretion, with malice aforethought. Malice here means an intentional killing, without just cause or excuse. Accident would be a good "excuse," and self-

defence a "just cause." The penalty for murder is death, or life imprisonment. If a man in a sudden outburst of anger kill another, it is manslaughter, a crime punishable only with imprisonment.

169. **Arson.** — Arson is the malicious burning of another's dwelling-house; and in some states it includes the burning of any building belonging to another. This is the highest offence against personal property, because it utterly destroys it. When the dwelling-house is burned, especially in the night time, the crime is greatly aggravated; for not only is the shelter of the family destroyed, but their household goods, and even their very lives are put in jeopardy.

170. **Civil Injury and Crime.** — The civil injury which one inflicts upon another by the commission of a crime is not settled when the criminal has served a term in the penitentiary. If A steals B's horse, the authorities will prosecute him for larceny. B may, however, at any time he sees fit, commence a civil action against A for the value of the horse, and the one action has nothing whatever to do with the other.

171. **Compounding a Felony.** — A private person is not permitted to settle with another for a felony. He may receive pay for the stolen goods, and thus excuse the civil injury done; but he must not enter into any agreement to refrain from making a criminal complaint. Such an agreement is called "compounding a felony," which is itself a crime punishable by fine or imprisonment. Misdemeanors for which the injured has a remedy by civil action may ordinarily be compounded, and the order of a court permitting it is a bar to further prosecution for the same offence.

TOPICAL ANALYSIS

1. Courts as instruments of protection.
2. Two kinds of injuries.
3. Public law; private law; international law.
4. Civil injuries founded on contract.
5. Civil injuries founded on wrongs.
6. Definition of a crime.
7. A misdemeanor.
8. Distinction between crime and felony.
9. Treason the highest crime against the state.
10. Perjury the highest crime against justice.
11. Murder the highest crime against an individual.
12. Arson the highest crime against property.
13. Civil injury and crime.
14. Compounding a felony.

QUESTIONS AND EXERCISES

1. To what extent may you resist a pickpocket?
2. Why is compounding a felony an offence against society?
3. After a lapse of six years the law will presume a debt to have been paid. Is this protecting the rights of a creditor?
4. How does legal malice differ from any other?
5. Name some other offence against personal security.
6. Can a man ever steal his own trunk?
7. What is the difference between civil and criminal libel?
8. How does a court determine the worth of one's services when no previous contract was made?
9. From the encyclopedia find the meaning of the statute of frauds.
10. State a case in which one's rights may be impaired by fraud.
11. Can perjury be committed except in a "judicial proceeding"?

XVI

THE TOWNSHIP COURT — CIVIL SIDE

172. A Court. — A court is a place where justice is judicially administered. The word "judicially" here means pertaining to a judge, an officer appointed by law to inquire into the facts, to determine the law, and to apply the remedy. In a broad sense (1) the word "court" also includes those officers who assist the judge, either in finding out the facts, or in applying the remedy, as the constable, the sheriff, and the jury. It is that body in the government to which the public administration of justice is committed (21).

173. A Justice's Court. — The township court is called the justice's court, from the title of the officer who presides over it. The office of justice of the peace is of very ancient origin, it having been transplanted to this country from England, where it has existed for centuries. In some states there is only one such officer in the township or precinct; but often there are more, generally not to exceed four, depending upon the laws of the particular state. These are sometimes called "the people's courts," because by means of them justice is brought to every man's door. Any one may appear for himself, or for another, in a justice's court; and generally one is allowed to conduct his own case in any court. A case, or suit at

law, may be defined as a question contested before a court of justice.

174. A Justice's Jury. — Whenever a civil suit is brought in the township court, either side is entitled to a jury trial; and in a criminal action a jury must be had, unless the prisoner especially waives the privilege. A jury generally consists of twelve men (285), but in Michigan and in some of the other states, a jury in a justice's court consists of six men, chosen from the electors and freeholders of the township. The jurors must be "good men and true," who will decide the case upon the merits. In a civil case, the one who demands a jury must advance the fee; but in a criminal trial the expense is borne by the state.

175. The Jury in History. — The method of trial by jury has been used time out of mind in England, and also in this country since the early settlement. The jury is said to have been peculiarly the offspring of the English people; but it seems to have been made use of by most, if not by all, of the northern nations of Europe, and the principle was recognized by the Greeks and Romans. It has been carried to the remotest parts of the earth by the English-speaking race, the right being carefully guarded in the constitutions of the several American states, and in that of the nation. (Const. U.S., Sixth Amendment.)

176. Qualifications of Jurors. — The law is very careful to permit no one to serve on a jury who will not be likely to render a fair and impartial verdict. This rule will exclude any one who is of kin to either party, or interested in the suit, or who does not possess a good character. The juror must be an elector, a person of good judgment, one

able to speak the English language, and in most states a freeholder. No person need to serve if he be over sixty years of age; and public officers, clergymen, teachers, and some others are generally exempt.

177. **Civil Jurisdiction.** — By jurisdiction is meant the right which the court has to try cases. The jurisdiction is carefully limited by law, and is either original, appellate, or concurrent. Original, is where the case may be commenced in court; appellate, is where a higher court has the right to retry, or to rehear a case that has already been tried in the lower court; concurrent, is where the plaintiff may bring his suit in either of two or more courts.

Civil cases must, as a rule, be commenced in a justice's court where the debt or damage does not exceed $100; and, with some few exceptions, any case where the debt or damage does not exceed $300 may be commenced in the justice's court. Where the amount involved or the damage claimed exceeds $100, and is $300 or less, the plaintiff may commence either in the justice's court, or in a higher court, at his option (283).

178. **The Complaint.** — Before a civil case can be commenced in a township court, the one who desires to begin it must make such a statement to the justice as will authorize him to issue the proper order. In some of the states this complaint need not be in writing, nor made under oath; but in others both the writing and the oath are required. The one who brings the suit is called the plaintiff, the one against whom it is brought is the defendant, and both are usually individuals or corporations (76).

179. **The Summons.** — When the justice is of the opinion that he will be warranted in doing so, he may issue a sum-

mons. This is an order signed by the justice, directed to any constable in the county, commanding him in the name of the people of the state to summon A. B. to be present in the court, at a certain place, at a time mentioned in the order, to answer to the suit of one C. D. In some states nothing need be said concerning the nature of the complaint; but in others a written copy must be attached to a copy of the summons, both of which must be delivered to the defendant. The defendant need not pay any attention to a justice's summons; but if he does not, judgment will be rendered against him.

There are circumstances in which a warrant may be issued in a civil case, and the defendant arrested as in a criminal case. Formerly a person could be put in prison for the non-payment of any debt which was found to be legally due. Now, however, this can be done only when the debtor has been found guilty of fraud in contracting the debt. In certain damage cases also the defendant is liable to imprisonment. In all civil cases when the penalty is imprisonment the plaintiff must not only pay the expenses of the suit, if the defendant is unable to do so, but he must also pay the board of the defendant during his confinement in the county jail. Sometimes certain classes of prisoners are not kept locked up, but are given the jail limit, *i.e.* they may go where they please, but not outside the county.

180. Obtaining Possession of Property before Suit. — In some cases a person may wish to obtain possession of a specific article, as a horse, which he claims another is wrongfully detaining from him. Or it may be that the debtor is about to dispose of his property fraudulently, in

which case a judgment would be worth nothing. Instead of issuing a summons, the justice would send an officer to seize the horse and deliver it to the plaintiff; or to take the goods into his own possession, and to hold them until the plaintiff could have an opportunity to prove the legality of his claim. If the plaintiff could do this, he would be permitted to keep the horse; or the goods would be sold to satisfy the debt, including costs. In both these cases the plaintiff would be required to give a bond to the justice to pay all damages that might arise to the defendant, if at the trial he should not maintain the rightfulness of his claim.

181. The Subpœna. — It often happens that a witness must be brought into court to testify. If he will not come without it, a *subpœna* is issued to compel his attendance. This is an order signed by the justice, commanding the person to whom it is directed to be present at his office, at a certain hour, on a certain day, to testify. A copy of the *subpœna* is given to the witness by the officer, who tenders him the legal fee, and he is then obliged to obey the command, or be punished for contempt of court. But no man can be compelled to be a witness against himself, nor will a wife be permitted to testify against her husband, nor a husband against his wife.

182. The Trial. — On the day designated for the trial, the plaintiff, the defendant, the lawyers, if any are employed, and the witnesses appear before the justice. The nature of the suit is first made known, either by the filing of the plaintiff's declaration or by the reading of the complaint. The defendant now denies the rightfulness of the plaintiff's cause of action, in whole or in part, and the trial proceeds. A jury is summoned (201) if either party demands

one, but otherwise the case is tried before the justice alone. Usually the plaintiff is the first witness called, and explains as clearly as he can his claim against the defendant. The witnesses for the plaintiff are now introduced, and each tells his story. The defendant then makes his statement under oath, and is followed by each of his witnesses. The lawyers assist the court by questioning the witnesses in such a way as to enable them to tell a simple story that shall contain all they really know about the transaction, and nothing more. To further assist the court, after the examination of the witnesses has been closed, each of the attorneys makes an address in which he seeks to justify the cause of his client.

183. **The Verdict.** — In the higher courts the judge delivers a charge to the jury, which is a statement of the law applicable to the case. The justice seldom delivers a charge, for in this court the jurors are judges both of the facts and of the law. The verdict is the opinion of the jury delivered to the judge. It is usually in general terms, "for the plaintiff" or "for the defendant," the jury finding at the same time, in cases which require it, the damages to which the victorious party is entitled.

184. **The Judgment.** — The judgment is the action of the court before which the trial is had, declaring the consequences of the facts as found by the jury, or by the judge when there was no jury. This is always in writing, and is entered by the justice upon his docket. If the trial was by jury, the entry should be made immediately; but if there was no jury, the justice is given three or four days in which to render a judgment. It is very important that the judgment be given according to due form of law, or it

will not support the execution, and the officer who attempts to levy upon the goods of the defendant will himself be liable.

185. **The Appeal.** — When for any reason the defeated party in a justice's court is dissatisfied with the result of the trial, he may appeal to the next higher court, where the case will be retried in substantially the same method as in the lower court. There is this difference, however, viz., that the judge is generally a skilful lawyer, who will see to it that each party to the suit is carefully protected in his rights. If the judge should make what either party might consider an error in the interpretation of the law applicable to the case, then, usually, another appeal may be had to the highest court in the state. If in the opinion of the Supreme Court no error has been made, it will affirm the decision of the lower court, and the case is then finally disposed of. If, however, the Supreme Court should think that the judge in the lower court had committed an error, it will do either of three things: reverse the decision and dismiss the case, grant a new trial, or modify the decision and affirm the rest.

186. **The Execution.** — The last step in civil suits is the execution. This is an order issued by the justice, in the name of the people of the state, directed to any constable of the county, commanding him to seize upon the goods and chattels of the defendant, unless they are exempt from seizure (38), sell them, and bring the money to him within a certain number of days. With the money thus obtained, the justice pays the debt, satisfies the costs, and returns the remainder to the defendant. If there is an appeal, of course no execution is issued.

TOPICAL ANALYSIS

1. Definition of a court.
2. A justice's court.
3. The justice's jury.
4. The jury in history.
5. Qualifications of jurors.
6. Civil jurisdiction in justice's courts.
7. The complaint in civil cases.
8. The summons; the civil warrant.
9. Obtaining property before suit.
10. How to obtain a witness.
11. The trial.
12. The verdict.
13. The judgment.
14. The appeal.
15. The execution.

QUESTIONS AND EXERCISES

1. What does the word "court" mean by derivation?
2. What is the purpose of cross-examination?
3. Are the words "attorney" and "lawyer" synonymous?
4. If asked to levy an execution under a void judgment, how may an officer protect himself from damage?
5. What is a justice's docket?
6. How long is a jury allowed in which to decide a case?
7. What is an "attachment"?
8. How else than "judicially" can justice be administered?
9. What is the meaning of "subpœna" by derivation?
10. How much must the one demanding a jury deposit with the justice before he will call one?

XVII

THE TOWNSHIP COURT — CRIMINAL SIDE

187. Criminal Jurisdiction. — By criminal jurisdiction is meant the power which a court has to hear, or to hear and determine, accusations of crime. The criminal law of this country consists almost wholly of statutory enactments, which are simple in their nature and easily understood. Jurisdiction in criminal cases in a justice's court is limited to misdemeanors (164). In every state, however, when a man is arrested for a felony it is made the duty of the justice to inquire into the circumstances, to see if there be probable cause to believe the accused guilty, and, if so, to hold him for trial by a higher court. If the justice thinks there is sufficient ground, he will commit the prisoner to the county jail until his trial in the county court, unless he will give a bond, signed by two responsible persons, for his appearance in the higher court upon the day of trial.

188. The Complaint. — In a criminal case the complaint differs in some very important particulars from one in a civil case. The act charged is looked upon, not as one committed against the private individual, but as against the whole community. In this instance, therefore, the state is the plaintiff; and the one who makes the complaint, often called the complaining witness, is not supposed to have any especial interest in the outcome. In some of the states, indeed, there is an officer whose duty it is to make all the

complaints in criminal cases or actions. The complaint always charges that a crime has been committed, specifying the time, the place, and its nature. Provided they have been perfectly honest, neither the complaining witness, nor the justice who issues the warrant, nor the constable who makes the arrest, can be held responsible in damages to the defendant, although he may have been perfectly innocent, and greatly injured.

189. A Warrant. — In criminal cases the action is begun by a warrant, which the justice issues immediately upon the filing of the complaint. This warrant is an order, signed by the justice, directed to any constable in the county, commanding him in the name of the people of the state to produce the body of A. B., mentioned therein, to answer to the complaint of one C. D.

190. The Arrest. — Armed with the warrant, the officer finds the accused, shows him the warrant, and takes him into his custody. Ordinarily the prisoner will be committed to jail; for if he should escape through any carelessness on the part of the officer, the latter could be punished. It is very rare that any resistance is made to the commands of the officer, for this is itself a crime, which might meet with severe punishment. If, however, any resistance should be offered, the officer could employ all the force necessary to make the arrest, and any whom he might call upon would be obliged to assist.

191. Admitting to Bail. — As soon after the arrest as practicable, the prisoner must be taken before the justice to have the amount of his bail bond fixed. He is always entitled to bail, except in the case of capital crimes where the proof is evident or the presumption great. Bail is the

delivery of a man out of custody, upon the undertaking of one or more persons that he shall appear at a certain day to stand trial. This undertaking is in the form of a bond, which must not be excessive; for the right to his liberty, upon giving a reasonable assurance that he will obey the orders of the court, is a constitutional one, and, except in rare instances, no man may be deprived of it. The amount of the bond is left to the discretion of the judges.

192. The Arraignment. — Upon the day fixed in the bail bond, or in case no bond has been given, as soon as may be after the arrest, the prisoner is brought before the court, the complaint is read to him, and the justice asks him if he is guilty or not guilty. If the accused answers "guilty," and the offence is simply a misdemeanor, the justice will sentence him at once; but if the offence be a greater one, the justice will commit him to the county jail, or admit him to bail. But the prisoner may answer "not guilty," or he may stand mute, in which case a plea of not guilty will be entered in his behalf, and the time set for his trial.

193. The Trial. — After the arraignment, the method of conducting a civil and a criminal case is essentially the same. In the latter, however, the state is represented by its own attorney (295), and the defendant employs his own counsel. In the county court an attorney will be appointed by the judge to defend the prisoner, provided he is too poor to pay one himself. In some states an attorney thus appointed by the judge receives nothing, but in other states he is paid from the county treasury. If the crime alleged to have been committed is one for which the justice cannot impose a sentence, a jury is not summoned; but otherwise

it is. The verdict of a jury in a criminal case is always "guilty" or "not guilty." If there is only a preliminary examination, the justice may hold the prisoner for trial in the county court, or discharge him. The evidence produced against the prisoner at the preliminary trial is always carefully written down, and if the justice holds him, a copy of it will be sent to the county clerk. In those states employing one, this evidence will be laid before the grand jury (284), which may or may not find "a true bill" as it sees fit.

194. The Sentence. — After conviction by a jury, or where the prisoner has entered a plea of "guilty," the justice orders him to rise, and asks him if he knows of any legal reason why sentence should not be pronounced upon him. The prisoner is now given an opportunity to answer, and then the justice tells him what his punishment will be.

This action of the court is called a sentence.

TOPICAL ANALYSIS

1. Criminal jurisdiction in the justice's court.
2. The criminal complaint.
3. A warrant.
4. The arrest.
5. Admitting to bail.
6. The arraignment.
7. The trial.
8. The sentence.

QUESTIONS AND EXERCISES

1. Compare the judgment and the sentence.
2. When a lawyer is appointed by the court to defend a prisoner, must he do so?

3. Upon what theory can the justice enter a plea of "not guilty" for a prisoner who stands mute?

4. Why should the criminal law be more simple than the civil?

5. May an officer kill his prisoner to prevent escape?

6. Should a lawyer receive pay from the county for defending a prisoner who is without resources?

7. What is an "information"?

8. What is the advantage of both the preliminary examination and the investigation by the grand jury?

9. If a prisoner forfeits his bail, and the amount is paid, can he afterward be imprisoned on that charge?

10. How can a prisoner's bondsman protect himself?

11. Should the jurors in a criminal case in a justice's court receive pay?

XVIII

A CIVIL CASE IN A JUSTICE'S COURT

195. Commencement of Suit. — On January 25, 1902, William Evans went to a justice of the peace, in the township of Williams, county of Bay, and state of Michigan, and requested that a summons be issued for Ezra Jones, which was done. The writ commanded any constable of the county to summon Mr. Jones to be present at the office of J. P. Brown, a justice of the peace of said township, at ten o'clock A.M., on February 3, 1902, to answer to the suit of William Evans. The writ stated that the cause of the action arose upon promises, for the breach of which Mr. Evans claimed damages, $300 or under. Mr. Brown made out an exact duplicate of the summons, and handed it to the constable, O. M. Stanton. The justice could have appointed a private person to act as constable.

196. Service and Return. — The constable took both papers, found Mr. Jones, showed the original to him, and handed him the duplicate. He then returned to the justice's office, and indorsed upon the original summons the following: "I hereby certify and return that, on the twenty-fifth day of January, 1902, I served the within summons upon Ezra Jones, personally, the defendant herein named, by showing him the original, and by delivering to him a copy thereof, at the village of Auburn, in said

county." To this statement he signed his name and placed his fee at fifty cents.

197. The Declaration. — Upon the day and at the hour stated, both Mr. Jones and Mr. Evans appeared at the office of Justice Brown, and, the case being called, Mr. Evans said his claim was for some logs sold and delivered to Mr. Jones, of the value of $75. This statement was made orally, but might have been made in writing. This action on the part of Mr. Evans is variously called filing a declaration, or a petition, or a complaint; but no matter what term is used, it is simply a statement of the facts which form the plaintiff's cause of action.

198. The Adjournment. — As the defendant was not ready to go to trial, he asked for an adjournment. This was granted, and the date fixed for February 7, 1902, at ten o'clock A.M., the trial to be held in the same place. There is never any trouble in securing the first adjournment; but courts are not made to be trifled with; and, unless a very good reason is assigned, further adjournments are not likely to be granted.

199. Joining Issue. — At the hour appointed both parties appeared personally, the plaintiff being represented by E. A. Baker, his attorney, and the defendant by attorney S. A. Gray. Mr. Gray now filed the plea of "general issue," which was a brief way of stating that his client owed Mr. Evans nothing. The issue was now said to be joined, "the issue" being a statement affirmed on one side and denied on the other. The declaration and the plea together constitute the pleadings, or a statement in legal and logical form of the plaintiff's cause of action, and the defendant's grounds of defence.

200. **Striking a Jury.** — Mr. Gray now demanded a jury, his client advancing the necessary fees. Justice Brown administered an oath to constable Stanton, who promised to select, according to his best judgment, such persons as were competent to serve upon the jury, and who would decide without favor to either party. The constable wrote down eighteen names, from which attorneys Baker and Gray alternately struck off six, leaving six.

201. **The Venire.** — The justice here issued a *venire*. This is a written command to the constable, directing him to summon the six persons left upon the list to appear at his office, at two o'clock P.M. of that day, to make a jury for the trial of an action wherein William Evans was plaintiff and Ezra Jones defendant. The word "*venire*" is for *facias venire*, and means "cause to appear." There being nothing further to do at the time, the court adjourned until two o'clock P.M.

202. **Selecting the Jury.** — At two o'clock the court was called to order, and constable Stanton produced his *venire* with the statement indorsed upon it that he, personally, had notified each of the persons named within to be present at the place and hour mentioned. Each one of those summoned answered "present" as his name was called; but Mr. Otis said it would be impossible for him to remain, owing to sickness in his family, and he was excused.

203. **Talesmen.** — This being a civil action, the five remaining jurors could have tried the case; but Mr. Gray was not satisfied to have less than six. Justice Brown thereupon directed the constable to supply the deficiency, and Moses Howe was called to act in the place of Mr.

Otis. Mr. Howe was a talesman, because the calling of him was necessary to make up a sufficient number to form a jury. The word "*tales*" is a Latin word, meaning "sufficient."

204. Examination of Jurors. — The six men now took their seats in a body, when Mr. Baker and Mr. Gray in turn questioned each as to his qualifications to serve upon a jury. The answers were apparently satisfactory; but Mr. Baker did not see fit to accept Mr. Bryan, and objected to his sitting. Justice Brown excused Mr. Bryan, and a talesman was selected, who was allowed to serve. You will notice that no reason was given for excusing Mr. Bryan, and the challenge was, therefore, "peremptory." If a reason had been assigned, it would have been a "challenge for cause." Peremptory challenges are not always allowed in justice's courts, and their number is limited in any court.

205. Plaintiff's Statement. — After the jury had been sworn to render a fair and impartial verdict, Mr. Baker, on behalf of the plaintiff, made the following statement. He said that one Charles Jenks had sold some logs to Mr. Jones; that Mr. Jenks was the agent for Mr. Evans; that the logs belonged to Mr. Evans; that their value was $75; that Mr. Evans, the plaintiff, had demanded payment of Mr. Jones, which had been refused; and further said that he should ask the jury for a verdict of $75, with costs of suit.

206. Defendant's Statement. — Mr. Gray, on behalf of the defendant, did not deny that Mr. Jenks had sold the logs in question to Mr. Jones for $75; but said that, shortly after he had bought them, Mr. Frank Bently had

given him an order for the money, signed by Mr. Jenks; that he had accepted it; that he considered himself indebted to Mr. Bently to the amount of the order. He said that his client never knew that Mr. Evans had ever claimed to own the logs until after he had accepted the order in favor of Mr. Bently. Mr. Evans, being duly sworn, testified substantially as his attorney stated he would.

207. **The Evidence.** — The plaintiff now introduced Mr. Jenks as a witness, who, being duly sworn, said that he had cut the logs for Mr. Evans, to whom they belonged. He admitted that he bought camp supplies from Mr. Bently to the amount of $75, and that he had given him the order on Jones; but said that Mr. Bently knew that he was working for Mr. Evans, and that he bought the goods on his own credit. When he gave the order he thought Mr. Evans would be willing to have him do so, and apply the amount on his contract. Mr. Jones, being duly sworn, justified the statements of his counsel.

208. **Further Evidence.** — Mr. Bently, being sworn, said that, when he sold the goods to Mr. Jenks, he never had the slightest suspicion that Mr. Jenks did not own the logs; that Mr. Jenks said he owned them; that the name of Mr. Evans was never mentioned; and that he had never heard of Mr. Evans in the transaction until this suit had been commenced. Mr. B. F. Clark, being sworn as witness, said that he was present when Mr. Jenks bought the goods; that he claimed to be working on his own account; and that the name of Mr. Evans was never mentioned.

209. **The Arguments.** — The testimony being closed, Mr. Baker made his argument in favor of the plaintiff. He contended that the testimony showed that he never had

authorized Mr. Jenks to sell them; and that in doing so Mr. Jenks had acted beyond the scope of his authority; that Mr. Bently had sold the goods at his peril; and that his client was not responsible for Mr. Jenks's acts. He therefore asked for a verdict.

210. **Concluding Argument.** — Mr. Gray now made his argument for the defence. He contended that Mr. Bently had sold the goods to Mr. Jenks in good faith, relying upon his claim of ownership; that the goods were camp supplies; that plaintiff must have known that his agent was using the credit that the logs would give with which to buy his supplies; that he had carefully concealed his principalship so long as there were any supplies to be bought; and that he had only disclosed it when there was something to be gained and nothing to be lost. Mr. Gray said that it was now too late for Mr. Evans to claim the logs, and asked the jury to give a verdict for defendant, with costs.

211. **The Verdict.** — The constable was now sworn by the justice to keep the jury in some private and convenient place, without meat or drink, unless otherwise ordered by him; nor to allow any one to communicate with them; nor to do so himself, unless otherwise ordered by the court; and not, before they had rendered a verdict, to let any one know the state of their deliberations. The jury now went into an adjoining room, where they remained a short time, after which they returned to the courtroom, under the charge of the constable. The justice asked them if they had agreed upon a verdict. The foreman replied that they had, and that it was for the defendant.

212. **The Judgment.** — Justice Brown now entered in his

docket that the jury had found for the defendant; rendered judgment against the plaintiff and in favor of defendant, and taxed the costs against the plaintiff, at $11.50. The "docket" is a book in which is entered a brief record of the proceedings in a case. Upon this judgment an execution might have been issued, had not the plaintiff, within the time allowed by law, appealed the case to a higher court (349).

213. **Statutes of Limitation.** — It is a maxim of the law that there should be an end of litigation, and therefore a time is set within which the defeated party must bring his appeal. If it were not for some such provision a person would never know when he was through with a lawsuit, and he could never rest content in the peaceful enjoyment of his property, or even of his liberty. The laws go further than this, and say that, if one man has a cause of action against another, he must commence his suit within a certain length of time, or not at all. In criminal matters, also, a man must be arrested within two years from the time the crime was committed, except in the case of capital crimes, or he will not be molested on that account. Laws of this nature are called "statutes of limitation," and are found in every civilized state. It is always a statute, because there were no provisions of this kind in the common law (25).

At the common law a debt was never settled until it was actually paid; but now, by statute, if the creditor does not take timely action, the law will consider the debt discharged whether it is paid or not. The number of years during which the suit may be brought varies from two to six, according to the state. An appeal from a judg-

ment, decree, or sentence of a court must generally be made within sixty days; but, upon due cause being shown, the time may be extended. A man may also gain a title to a piece of land by occupying it peaceably twenty years, and often for a less period. If you wish to know the length of the period in your own state, you must consult the Revised Statutes.

TOPICAL ANALYSIS

1. Evans *vs.* Jones.
2. The summons issued.
3. Service and return of summons.
4. Mr. Evans files his declaration; adjournment.
5. Issue joined; the pleadings.
6. Summoning the jury; selecting the jurors; talesmen.
7. Testing the jurors.
8. The trial: —
    (1) Plaintiff's statement.
    (2) Defendant's statement.
    (3) Evidence for plaintiff.
    (4) Evidence for defendant.
    (5) Argument for plaintiff.
    (6) Argument for defendant.
9. Submitting the case to the jury.
10. The verdict.
11. The judgment.
12. The appeal.

QUESTIONS AND EXERCISES

1. Visit a justice's court, and observe carefully the trial of a case.
2. Organize a school court, and try this case.
3. Reproduce the arguments of each attorney both orally and in writing.

4. How much does it cost to summon a justice's jury in this state?

5. What is the life of a justice's summons?

6. Why are some persons excused from taking an oath?

7. A pupil was severely reprimanded by the teacher before the school for a trifling offence. The punishment seemed too harsh to the pupils; but the teacher explained that it was only one of a large number of similar offences. Draw up a complaint, and try this case. In your complaint, specify four distinct breaches of good discipline.

For the necessary forms, see Appendix.

Part III

The Village, City, and County Government

CHAPTER XIX. Formative Influences

CHAPTER XX. Villages and Cities

CHAPTER XXI. The County — Its Legislative Department

CHAPTER XXII. Political Machinery — Caucus and Primary

CHAPTER XXIII. Political Machinery — The Convention and the Election

CHAPTER XXIV. Administrative Officers

CHAPTER XXV. The County Courts

CHAPTER XXVI. The Territories

XIX

FORMATIVE INFLUENCES

214. Mental Habit. — The natural desire of the normal human being is to be let alone. What we have been used to all our lives becomes a second nature or a mental habit with us. We are conservative by nature, clinging to the old, and entering upon the new and untried with reluctance. This will account, in part at least, for the permanence of our laws and civil institutions, which in many cases can be traced back for centuries. There are, however, certain forces in society which constantly tend to change existing conditions (12).

215. Social Customs. — The laws of a country are influenced by social conditions. The state of Maine has a prohibitory liquor law, in South Carolina liquors are sold by state officers, while in New York the saloons are licensed. Duelling is permitted in Italy; in the United States it is a felony. In the Argentine Republic a lottery is maintained by the government; in most countries it is prohibited by statute. The popular amusements of one country are often crimes in another.

216. Industrial Conditions. — The laws of a country also reflect the industrial pursuits of the inhabitants. Mineral rights are of great importance in those states where mining is the chief industry; while log liens and

timber limits characterize the laws of the lumbering states. There would be little need of a court of admiralty in Kansas; you would not expect to find an irrigation law in the statutes of Connecticut; while the laws for the protection of fish would never form a prominent feature in the legislation of Arizona.

217. **Great Inventions.** — Equally potent also in forming the institutions of a country have been the great inventions, and especially those of the nineteenth century. The cotton gin doubled the value of slave labor of the South, while the steam engine made possible the huge manufacturing plants of the North. Rapid transit by steam and electricity have made the villages and country for miles around only suburbs of the great city; while the telegraph and the long distance telephone have bound in closest relationship the remotest parts of the earth. The changes which these inventions have brought are reflected in the laws, the mental habits, and the social life of the people.

218. **Religion.** — The religious preferences of the people affect the laws. Under the strict rule of the Puritans no one was allowed to travel, cook, make beds, sweep houses, cut hair, or shave on the Sabbath day. In other countries an easier public conscience allows the people, after they have attended church, to spend the rest of the Sabbath day in playing games and in visiting. Thousands have lost their lives because they refused to accept another man's belief as their own; to-day, however, in all civilized countries the inhabitants are accorded the full right to worship as they see fit.

219. There are certain great charters which have had an immense influence in shaping our civil institutions.

The first, and perhaps the greatest of these, is the Great Charter, which, in 1215, was wrung from King John by the barons of England, sword in hand. Its most important provision was that "no freeman shall be taken, or imprisoned, or disseized, or outlawed, or banished, or any ways destroyed, nor will the king pass upon him, or commit him to prison, unless by the judgment of his peers, or by the law of the land" (10). Although this provision of the Charter was often violated by the rulers of England, the right was never surrendered; and upon this foundation personal liberty was afterward secured.

220. **Habeas Corpus.** — A second bulwark of our liberties is the writ of *habeas corpus*. These words mean "you may have the body," the object of the writ being to afford speedy relief from unjust imprisonment. From the earliest records of the English law no freeman could be detained in prison unless he had been duly convicted upon a criminal charge; or had been found by the court to be owing a civil debt. The right to detain a person was claimed by some of the English kings, and it was to prevent the exercise of their tyranny that the Habeas Corpus was passed in 1679. It provides that a person arrested for treason or felony may be admitted to bail, if he be not indicted at the first term after his arrest, and will be discharged entirely if not tried during the second term.

221. **The Bill of Rights.** — Like Magna Charta and Habeas Corpus, the Bill of Rights is looked upon as one of the great bulwarks of English liberty. It was passed in the year 1689, the first of the reign of William and Mary, and its chief provisions have been reënacted in the Constitution of the United States, of the separate states of

the Union, and in those of some foreign countries. This bill made standing armies in times of peace, and levies of money without consent of Parliament unlawful; guaranteed the right of petition, the frequent assembling of Parliament, freedom of speech and of press, and forbade interference with the laws on the part of the king.

222. **The Declaration of Independence.** — The great importance of this instrument is given in the words of Samuel Adams: "It was the first solemn declaration by a nation of the only legitimate foundation of civil government. It was the corner stone of the new fabric, destined to cover the surface of the globe. It demolished at a stroke the lawfulness of all governments founded upon conquests. It swept away all the rubbish of accumulated centuries of servitude. It announced in practical form to the world the transcendent truth of the inalienable sovereignty of the people. It proved that the social compact (19) was no figment of imagination, but a real, solid, and sacred bond of the social union."

223. **The National Constitution.** — After the close of the Revolutionary War it became evident that the Articles of Confederation did not confer sufficient power upon the central government, but left too much with the individual states. In 1785 Washington said that the "illiberality, jealousy, and local policy of the states were likely to sink the new nation, in the eyes of Europe, into contempt." Accordingly a new system of government was proposed, which should act, not on the states, but directly on individuals; and which should have vested in it full power to carry its laws into effect. A constitutional convention was called, in which all of the states were represented. After

careful consideration the present constitution was adopted in 1787, and submitted to the people, as the source of all sovereignty, for ratification.

224. **Ordinance of 1787.** — Second in importance to the Constitution comes the Ordinance of 1787. It provided for the government of the territory northwest of the Ohio River, out of which was formed the states of Ohio, Indiana, Illinois, Michigan, and Wisconsin. It prohibited slavery within the territory, provided that the estates of those dying without a will should be divided equally among the children, and set aside a certain portion of the public domain for the support of the schools (42).

225. **Emancipation Proclamation.** — Considered in all its relations, the Emancipation Proclamation was one of the most important documents ever issued by the hand of man. It derives its great significance from the fact that it overturned the labor system of the Southern states, and gave the blessing of liberty to a race that had been held in bondage in this country for nearly two and one-half centuries. By its terms it freed only the slaves in those states then in rebellion against the United States; but what it began was afterward completed by the Thirteenth Amendment to the Constitution. The Fifteenth Amendment raised the former slaves to political quality with their masters by providing that the right of a person to vote should not be denied, or abridged, on account of race, color, or previous condition of servitude.

226. **Popular Expressions.** — In 1688 seven of the English bishops were in danger of their lives, having been arrested by a tyrannical order of King James. Among these was Trelawney, Bishop of Cornwall, who was

respected and loved by his parishioners. All over the country the peasants chanted a ballad of which the burden was as follows: —

"And shall Trelawney die?
And shall Trelawney die?
Then thirty thousand Cornish boys
Will know the reason why."

And the miners from their caverns echoed the song with a variation: —

"Then twenty thousand underground
Will know the reason why."

The excitement aroused appalled the ministers, and the bishops were saved. Of a different nature, but equally powerful in its effects, was the expression of General Butler, calling the slaves "Contrabands of War." This expression was made the subject of a popular poem, was sung in the army and all over the Northern states, and a great authority has said that it was "worth an army corps."

227. **Public Men.** — It has been said that the history of any particular period is but "the lengthened shadow of some great man's life." This remark is probably more applicable to former centuries than to the present time; but there is some truth in it yet. It is hard to imagine what this country would have been without Washington, Webster, Clay, or Lincoln, or a score of others whose names will readily suggest themselves. The commentaries of Blackstone in England and of Chancellor Kent in this country, the decisions of Marshall and Chase, and the forensic eloquence of Choate and Evarts have each contributed their fair share to our progress. Nor must we

overlook Horace Greeley, the great journalist, nor Phillips, nor Beecher, the princes of platform orators.

228. **Writers and Inventors.** — We must not forget the influence exerted by our poets, essayists, historians, and novelists. We could never have been what we are now had not Longfellow, or Whittier, or Lowell, lived and sung. Hawthorne, Irving, and Cooper have each enriched the world's literature, and have added to our enjoyment and improvement. The marvellous progress in the methods of conducting our civil affairs is owing in no small degree to those great inventions which have made the names of Morse, Whitney, Edison, and Stephenson household words. Thousands of others, now nameless, have also contributed to our health and happiness by those lesser inventions which are everywhere to be found in daily use.

TOPICAL ANALYSIS

1. The permanence of our laws.
2. Amusements *vs.* Crime.
3. Influence of industrial conditions upon laws.
4. Great inventions as a civilizing influence.
5. Influence of religion upon legislation.
6. Magna Charta.
7. The Habeas Corpus.
8. The Bill of Rights.
9. The Declaration of Independence.
10. Our national Constitution.
11. The Ordinance of 1787.
12. The Emancipation Proclamation.
13. Popular expressions.
14. Public men and their work.
15. Writers and inventors.

QUESTIONS AND EXERCISES

1. Who said, "Don't give up the ship"?
2. What popular amusement in Mexico is a crime in this country?
3. Make a list of five great American poets not mentioned in the text.
4. Which is considered the greatest of Webster's speeches?
5. Who wrote "The Battle Hymn of the Republic"?
6. What influence for good did the Spanish-American War have upon this country?
7. What is meant by imperialism?
8. What great work did Lord Macaulay write?
9. Select by a class vote the five greatest American statesmen in their order.
10. Make a list of inventions which daily contribute to our health.

XX

VILLAGES AND CITIES

229. Historical. — There is a general disposition in the human race to form centres of population. Various reasons contribute toward this end. In an unsettled condition of affairs people unite for mutual protection against a common enemy. This will account for the origin of most of the cities of Europe, and for many of the early colonial settlements. At the present time no such necessity exists; but villages, nevertheless, are constantly springing up, and some of them are being developed into cities. The motive now is, not mutual protection against an external foe, but commercial, social, educational, and religious advantages.

230. Incorporation. — When for any reason a particular portion of the township becomes thickly settled, both public policy and the advantage of the inhabitants require that this territory should be separated from that adjoining it, and given a more or less independent form of government. A thickly settled community will find it more desirable, or even necessary, to incur expenses which the adjoining lands should not be compelled to bear. Nor will the policy of the law permit, except by the direct act of the legislature, and in some states not even then, farming lands to be thus burdened with taxes, the benefits of which the owners cannot enjoy. (Cooley, Const. Lim., § 500.)

231. **How Villages and Cities are Born.** — Villages and cities are usually incorporated under general statutes, but sometimes by special act of the legislature. In most states this power has been intrusted by the legislature to subordinate bodies, as to the board of supervisors in Michigan, and to the court of quarter session in Pennsylvania. Whatever method is pursued, the proposition to incorporate is generally submitted to the people. This is not essential, however, as the legislature may force the inhabitants to incorporate, if this be deemed advisable.

232. **The Charter.** — The charter is the grant made by the legislature to the people inhabiting certain territory, constituting them a corporation. A township, a village, and a city charter (86) differ from each other only in degree; and often some of the township officers, especially in the assessment and collection of taxes, exercise their powers within the village.

233. **General Principles.** — It will greatly assist you in understanding the government of the city and village if you will bear three things in mind. *First*, the general features of the township government are found also in the village and city, in very many cases the names and duties of the different officers being identical. *Second*, the grant of powers to the cities is much more extensive, and includes a greater variety of subjects. *Third*, some of the features of the state and national governments are found in the villages and especially in the larger cities.

234. **A Coöperative Association.** — If you will bear in mind that any political organization is, to a certain extent, also a business association, in which all the citizens are partners, you will be greatly assisted in your study of city govern-

ments. When the mayor orders the police to close the saloons at ten o'clock, he is acting in a purely political capacity; when he signs an ordinance to provide for commercial lighting, he is merely an instrument for forcing the minority of the taxpayers to embark in a business enterprise. When he vetoes an ordinance, he performs a legislative act.

235. **Identical Features.** — On its political side, the general features of the township, the city, the county, and even of the state and nation are identical. You will always find certain officers whose duties correspond. There will be a chief executive in cities, called the mayor, who will have the general supervision of affairs; a clerk, sometimes called a secretary or recorder, who will have charge of the records; and a treasurer, to collect and to pay out money and to account for the same. In the township a single officer will, unaided, discharge the duties of his office; in a city each officer may have several assistants. The resources are also derived from taxes, and everywhere, except in the nation, mainly from a direct tax. Large sums are also collected in many cities from licenses to carry on certain kinds of business.

236. **National Features.** — In the villages the representative form of government becomes more marked, the electors choosing five or six of their number to represent them in the village council. When the village develops into a city, the territory is divided into wards in each of which an alderman is elected to represent the ward in the city council. Often also a supervisor is chosen to represent the ward in the county legislature. Each ward also has a constable. The president of the village or the

mayor of the city, as a rule, has a veto power, which he uses to prevent or delay the passage of ordinances which he thinks will be detrimental. When the city becomes very large, as for example Boston, the council consists of two houses.

237. **Ordinances.** — The resolutions of the common council are called ordinances. They are not laws in the proper sense of the word, that term being strictly applicable only to enactments of the legislature. Like the resolutions of the township board (95), they are only of a local application and are intended for local benefit. They must be authorized by the charter, be reasonable, and cannot, unless the charter authorized it, interfere with the laws of the state. The business interests of the city are so much more extensive than those of the township or village that, naturally, the power is given to legislate upon a much wider range of subjects.

238. **Subordinate Boards.** — As in the township, so in the city, a large part of the business is intrusted to subordinate boards, or commissions. The members of these commissions are usually nominated by the mayor and confirmed by the council, but sometimes they are chosen by popular vote. There is a board of health with the same general powers as in a township. Besides this you will find commissions to which are intrusted the police department, the water works, the parks, the streets, the public library, the city hospitals, and other special interests which by reason of their importance demand separate boards. The board of education, independent or nearly so of the city government (102), has charge of the schools. Each one of these commissions intrusts the actual management

of the department to a chief, or superintendent, who has a more or less numerous body of assistants and employees.

239. **Village Courts.** — It is not often that the village has any separate court, but all offences arising under ordinances are tried before a justice of the peace of the township. Generally some particular justice is designated, as the one who lives in the village. A village marshal acts as peace officer, and sometimes he has the general powers given to a constable.

240. **City Courts.** — In a city there is usually a court established whose jurisdiction is confined entirely to offences arising under the ordinances. Besides the police courts there are often found other municipal courts which have both civil and criminal jurisdiction, their purpose being to relieve the county courts. The policemen are the peace officers of the city, but they are not permitted to serve papers in a civil suit, as can the constable or sheriff.

241. **Choice of Officers.** — As in the township so in the ward, the officers are elected by the direct vote of the people. In a city the representative system is followed. At the ward caucus (104) delegates are chosen to the city convention. Here the mayor, the recorder, the treasurer, a justice of the peace, the comptroller, the police judge, and any other elective officer is put in nomination. Generally these officers serve two or more years; but their terms of office are so arranged that some expire each year. An annual election is thus necessary, which usually occurs in the spring, to correspond with the township election. Each ward has one or more polling places, called election precincts, the vote in each being forwarded to an election commission, which canvasses them and announces the result.

242. **Modern Tendencies in City Governments.** — No problem in the administration of public affairs presents greater difficulties than does the government of a great city. In the less thickly populated communities the evil elements are kept under control to a large extent by a vigorous public sentiment (5). A thoroughly bad man becomes less dangerous because his wicked disposition soon becomes known, and people avoid him, for not to do so would render them unpopular. In large cities there are more bad people and they are bolder; they bid defiance to the laws both secretly and openly; they even get themselves elected to the city council, and make bad laws with a view to their own profit. The committee system of legislation (341) is a fruitful source of iniquity, for it is difficult to fix responsibility. Very many city charters give the mayor little authority, but confer it upon the council, where it is shifted to the committees, and no one will admit any responsibility for any abuse of power. New York, Chicago, Philadelphia, and other large cities have sought to remedy this by giving the mayor almost unlimited authority, and then holding him responsible for the proper use of it. This method is more in accordance with the principles of a monarchy; but great evils demand strong remedies.

TOPICAL ANALYSIS

1. The causes which produce cities and villages.
2. Necessity for incorporation.
3. Methods of incorporation.
4. Village and city charters.
5. Three principles which underlie municipal government.
6. The city as a business association.
7. Points of resemblance in municipal organizations.

8. Features borrowed from the state and nation.
9. Local laws.
10. Subordinate boards and their powers.
11. City courts; village courts.
12. Choice of officers.

QUESTIONS AND EXERCISES

1. Should a city own its electric lighting plant?
2. Should policemen be appointed by the city council or elected by the people?
3. What is meant by a boodler?
4. In what way can a good mayor advance the interests of a city?
5. What is the principle of gregariousness?
6. Why should cities be incorporated under a general law rather than by a special act of the legislature?
7. Procure a copy of a city or village charter and learn therefrom the duties of the mayor.
8. Should the mayor of a city have the power to appoint and remove officers without the consent of the council?
9. What advantage is there in having a mayor appointed by the council?
10. What do you understand by "fire limits"?

XXI

THE COUNTY — ITS LEGISLATURE

243. The English County. — "The civil division of the territory of England," says Blackstone, "is into counties, of these counties into hundreds, of these hundreds into tithings or towns. As ten families of freeholders (129) make up a town or tithing, so ten tithings compose a superior division, called a hundred, as consisting of ten times ten families. An indefinite number of these hundreds make up a county or shire." The head man of the shire was at first styled an elderman, or alderman; afterward the shire-reeve or sheriff appeared as the special representative of the king (272). The hundreds were the basis of the township.

244. The New England County. — The New England County was originally a number of towns united for judicial purposes. The towns were settled by church societies, composed of people of moderate means, or poor, united for common defence against the Indians, deeply religious, scrupulously honest, and obliged to labor with their hands for their daily bread. The life of the community was in the town and in its religious organizations. In New England the county is still of small consequence, it being a judicial district, and a highway district, and little more.

245. **The Southern County.** — In the Southern colonies the county was the political unit (77). The early emigrants were content with the formalities of the English church; large plantations instead of small farms were the rule, and a numerous body of slaves took the place of the sturdy yeomanry of New England. The long distances which the great majority had to travel to reach the county seat, together with the expensiveness and difficulty of the trip, made it impracticable for the smaller planters to attend the county meetings. Thus the government assumed the form of an aristocracy instead of a democracy, as in the North.

246. **The Compromise County.** — The tendency of people to carry their local ideas with them (214) caused the counties in the newer states to assume a form which was a compromise between the Northern and the Southern systems. In Ohio the county overshadows the township; while in Michigan the counties, though important, do not interfere to any great extent in merely local affairs. A study of the compromise county as found in Michigan will enable any one to learn readily by comparison the essential features as found in other states.

247. **Definition of a County.** — A county is a political division of a state, consisting of several townships united to assist in local government, and for judicial purposes. It is a public corporation (76), and as such can bring suit; but it has no common law powers (24), and can be sued only where the statute permits. It can purchase and hold real estate for the use of the county, borrow money, and do all other acts in relation to the property and concerns of the county, where the power is directly given, or may fairly be inferred from the statute.

248. **Size and Boundaries.** — Counties vary greatly in size, being larger in the Southern and Western states than in the Northern and Eastern. Rhode Island with 1085 square miles has five counties; while South Carolina with 3400 square miles has thirty-three. In Michigan every county must have at least sixteen townships; but any city having a population of 20,000 may be organized into a county. In the new states the boundaries are regular, following the lines of survey; but in the original states they are irregular, being composed of towns which often have natural boundaries (75).

249. **The County Seat.** — The place where the official business of the county is transacted is called the county seat. Here the county courts hold their sessions; here the public buildings are located, and here certain of the county officers are required to reside, and to keep their offices open for the accommodation of the public. As the majority of those who have business to transact are obliged to visit the county seat, its location is of considerable importance to property owners. In the first instance its site is usually determined by the legislature; but it can be removed only by a vote of the people, when the question of removal has been properly submitted to them.

250. **The Board of Supervisors.** — In some of the states the county legislature consists of representatives from various localities, and with limited powers; in others, legislative authority is intrusted to a board of from three to seven members, elected from the body of the county. In most states, perhaps, the county legislature has the official title of board of supervisors; in some, of board of county commissioners; and in a few, of court of quarter ses-

sions. In Michigan and Illinois the board of supervisors consists of one member from each township, who is thus both a township and a county officer. The cities are also entitled to representation upon the board. There is an annual meeting of the board, and such special meetings as may be found necessary; but the number of days for which each supervisor can draw pay for services rendered the county is limited by law. In states having the county system the supervisors are usually paid a salary, and an allowance is made for travelling expenses.

251. The Judicial Powers of the Board. — The board of supervisors is authorized to sell, purchase, and lease real estate, and to erect buildings thereon; to raise by tax, or by loan, money for county purposes, and to provide for the payment of the same; to fix the compensation of county officers, and to determine the value of any services that may have been rendered the county, which determination is final. This board also provides jails, courthouses, and all necessary public buildings, and keeps the same in repair. It also equalizes the valuation of the townships and cities as fixed by the assessing officers and boards of review.

252. The County Charter. — The act in accordance with which the county was organized, and the provisions of the general laws as modified by court decisions (86), constitute the charter of the county. The county government is considered a part of the state government, and a county debt created by authority of the law is regarded for the purposes of collection as a part of the state debt. In the same manner as there is no remedy against the state, so there may be none against the county. The state cannot

be sued except by its own consent; nor can the county be sued unless the state permits it. In such a case the creditors of a county have nothing to rely upon except the good faith of the county.

253. **Subordinate Boards.** — In addition to the board of supervisors there are various boards, or commissions, in the county which receive their power directly from the legislature, but which are made more or less subordinate to the principal board. Such are the poor commission, the board of auditors, where one is found, bridge commissions, jury commissions, and the like. In the New England, and in many of the compromise counties, the care of the ordinary roads and bridges, of the health, and sometimes even of the poor, is left to the township.

TOPICAL ANALYSIS

1. Composition of the English county.
2. The nature of the New England county.
3. The aristocratical nature of the Southern county.
4. The compromise county.
5. Definition of a county.
6. Size and boundaries of counties in different states.
7. Location and removal of the county seat.
8. The county legislature.
9. Judicial powers of the board of supervisors.
10. The county charter.
11. Duties of subordinate boards.

QUESTIONS AND EXERCISES

1. From the statutes of this state make a list of the judicial powers of the chief legislative body in the county.

2. Give some reasons why a tax should be levied to build substantial and even elegant county buildings.

3. Write a resolution to be submitted to the board of supervisors for the removal of the county seat.

4. Prepare the ballots for levying a tax to build a bridge.

5. How many supervisors are there in this county?

6. What advantages would a board of three supervisors have over a board of thirty?

7. How many square miles are there in this county?

8. How many counties are there in this state?

9. Can a member of the board of supervisors make a lawful contract with the county for supplies?

10. Debate the following question: —

"Resolved that the county legislature should consist of representatives elected from townships."

XXII

POLITICAL MACHINERY — CAUCUS AND PRIMARY

254. Political Parties. — A political party may be defined as a combination of electors, holding similar political views, and organized for the purpose of controlling the policy of the government. People vary in their opinions as to the best methods of conducting public affairs, and perhaps no two persons who think independently will agree perfectly upon any one course. As it is impossible for every man to have his own way in all respects, each modifies his views a little to suit those of another, and finally a large number are able to stand together.

When such an agreement has been reached it is generally reduced to writing, and is called a "platform." This platform is a statement of the course which a political party promises to pursue in administering the affairs of the government. Each subject touched upon in the platform is called a "plank." The number of political parties which can be formed is unlimited; but usually there are four or five. For years there have been in this country two great political parties, the Republican and the Democratic, and the great mass of voters have belonged to one or the other of them.

255. **The County Committee.** — The interests of each political party in the county are looked after by the county committee. This consists of one or more members from each township, and from each ward in the cities, the number being determined and the members elected by the county convention. Its officers are a chairman, a secretary, and a treasurer. It is the duty of this committee to keep well informed as to the party strength in the county, to ascertain the policy to be pursued as mapped out by the party leaders in the state and in the nation, to fix upon the place and the date for holding any county convention, to collect and disburse funds for defraying the expenses of the campaign, to procure and give out political literature, and to assign dates, places, and secure speakers for the holding of political meetings. During the political campaign the county committee always establishes its headquarters at the county seat, where any member of the party is welcome, and where the returns are sent from each precinct on the night of the election. The organization is so complete that, except when the vote is very close, each candidate for a county office knows his fate on the morning following the election.

256. **Township and Ward Politics.** — In the nomination and election of its officers the county makes use, as far as possible, of the machinery of the township. By virtue of his office the member of the county committee is usually considered as the party leader in the township or ward. It is his duty to become informed as to the party strength in the township or ward; and to accomplish this he should himself know, or have the means of ascertaining, the political preferences of every voter. When there is but one

precinct in his district, this work of gathering information can be done by one person; but sometimes there are a large number of precincts, with several thousand voters, and then the leader must have a well-trained body of subordinates to assist. The township member also calls caucuses and primaries for the selection of delegates to the county convention, makes the local arrangements for political meetings, sees that the political literature sent out by the county committee is placed in the hands of the individual voters, distributes the money sent him by the county committee where it will do the most good, sends in the returns on the night of election, and attends the meetings of the county committee.

257. **A Political Caucus.** — A caucus was originally a conference between the members of a party, either to decide upon measures to be adopted, or to select candidates for offices to be filled (104). An excellent illustration of the first kind may be found in the Boston caucus which decided that the British must rule both regiments or none. When the chief purpose is to select candidates for offices, it may be called a political caucus. The word "caucus" is said by some authorities to have been derived from the name of a Mr. Calkins, who kept a corner grocery in Boston where such meetings were held. Others derive it from the Caulkers' Union, an organization which was very successful in electing its candidates. The proceedings of a political caucus are always very informal. A chairman and a secretary are appointed, a ballot-box is provided, tellers are selected to receive and count the ballots, and the results are announced by the chairman and recorded by the secretary.

258. **Political Clubs.** — A natural outgrowth of the county committee and the caucus system is the political club. For a party to succeed in an election, its organization must be kept up during the whole year. In the townships, villages, and cities of moderate size, occasional meetings of the committee will do until a few weeks before the election, when they must be more frequent; but in the larger cities this is not sufficient, and each of them has one or more political clubs, the influence of which is a determining factor in all elections. If the primary purpose of the club were to educate the voters in the principles of the party, the organization would be a valuable one; but while this is no doubt accomplished to a certain extent, the main purpose is to secure possession of the offices for the sake of profit, which is quite another thing. The members of the club are too often bound together, not by a sentiment of patriotism, but by a desire for gain; and, through the influence of this spirit, politics descends from a noble profession to a disreputable trade. The officers who compose this club are sometimes called a "ring," and the chief officer a "boss."

259. **The Primary.** — A primary is a meeting held by a political party in each precinct, the simplest political division, for the nomination of officers or delegates. There is a distinction between a caucus and a primary, and when both are used the former is held to prepare a list of names to be submitted at the primary, from which either the officers or the delegates are to be chosen. This list is commonly called a "slate." Often, however, no caucus is held, and two or more slates are prepared by individuals. It is generally the case that those whose names are upon

an individual slate are pledged to carry out the wishes of the slatemaker.

260. Holding a Primary. — Sometimes the method of organizing and conducting a primary is carefully prescribed by laws of the state. When, however, the law is silent upon the subject, the method may be somewhat as follows: the primary is called to order by the township or precinct committeeman, or by the chairman of this committee, if there be more than one member, who states the purpose of the meeting. The chairman, a secretary, and, if the vote is to be by ballot, two tellers, are usually appointed by the voters.

The ballots are now distributed, the voters mark their preferences, and the tellers collect and count the ballots. Instead of using printed ballots, the vote may be taken *viva voce*, by a show of hands, or by a division of the house. Whatever method may be used, the secretary announces the results, and the chairman declares the one having the highest number to have been chosen. If the purpose of the primary be to nominate township officers, the vote for each is taken separately; but if it be to choose delegates to a county convention, usually all are voted for at the same time. The secretary now writes out a clear statement of the results of the primary, which he signs, as does also the chairman. If an election is to be held, this statement is given to the proper officers, and the names are placed upon the official ballots. If delegates are chosen to the county convention, this statement is given to the chairman of the delegation, and constitutes the credentials.

261. Ratio of Representation. — Several days before any

county convention, the committee is called together by its officers, and a date is set for the holding of the convention. Before this date arrives, a caucus, or a primary, or both, is called in each ward and in each township for the nomination of delegates to the county convention. The number of delegates to which each ward and township is entitled is found by dividing the whole party vote for governor at the last election by a certain number, say thirty, as determined by the county committee. This number is called the ratio of representation. An additional delegate is given when the number left after dividing is greater than one-half of the ratio, and every township or ward is entitled to at least one delegate.

262. Delegates. — A delegate may be defined as an agent chosen by a certain number of voters to represent them at a convention. Just as an agent's power is limited by the instructions of his principal, so the voters who select the delegates may limit their powers by passing proper resolutions. If this be not done, each delegate may exercise his own judgment and vote as he pleases. Quite often, however, all the delegates from a particular township or ward will vote as a unit, as this course will give the delegation more influence. For the nomination of township or precinct officers, the primary is the only meeting necessary; but all the elective officers of the county are nominated in the convention.

263. Alternates and Proxies. — It often happens that one or more of the delegates selected does not care to go to the county convention, and some one else fills his place. This substitute is called a proxy. Sometimes each delegate is allowed to appoint his own proxy, but more often

proxies are chosen by the delegation. Occasionally, two sets of delegates are selected, the second being called alternates, to serve in case any of the principal delegates are absent.

TOPICAL ANALYSIS

1. A political party; a platform; a plank.
2. Composition and organization of the county committee.
3. Township and ward politics.
4. A political caucus; derivation of the term.
5. Political clubs; Tammany.
6. Definition of a primary; a slate.
7. Holding a primary.
8. Ratio of representation.
9. Delegates.
10. Proxies and alternates.

QUESTIONS AND EXERCISES

1. In New England the merits of candidates are discussed in open caucus. Is the rule a good one?

2. Should delegates be instructed to vote as a unit?

3. Ought a voter who has attended a caucus always to be bound by its action?

4. What is "repeating"?

5. Look up the derivation of the word "Tammany."

6. What is a "packed" caucus?

7. Explain the term "ward heeler."

8. Attend a caucus and see how the method of conducting it differs from that described in the text.

9. Why not vote for candidates at the primary and dispense with the convention?

10. Debate the following: —

"Resolved that the convention system of nominating candidates should be confined to state and national officers."

XXIII

POLITICAL MACHINERY — CONVENTION AND ELECTION

264. The Convention. — At the time and place appointed, the chairman of the county committee calls the convention to order, states the purpose, and asks the further pleasure of the meeting. Sometimes the county committee selects the temporary chairman and secretary; but often the convention chooses even the temporary officers. The next step is the appointment of a committee upon organization and order of business, a second on credentials, and a third on resolutions. Sometimes the committees are appointed by the chairman, and sometimes by a vote of the delegates, the number being determined by the convention.

A short recess is now taken to enable the committees to make up their reports. It sometimes happens that the convention does not wish to take a recess, but will fill in the time by listening to speeches. This affords a really fine opportunity for a good orator to make his mark. His audience is sympathetic, the topic is of his own selection, and if he handles it skilfully, it will make him popular with his party and pave the way for future favors.

265. Committee Reports. — After the appointment of the committees they will usually retire to separate rooms to

prepare their reports. The chairmen of the several township, ward, or precinct committees will now hand their credentials to the credential committee for inspection. If they be regular on their face, and there be no contest, the list of delegates upon each set will be accepted. There may, however, be a contesting delegation, in which case the committee will recommend the acceptance of the list which seems best entitled to it.

The committee upon organization and order of business will recommend a plan for conducting a convention substantially as follows: —

1. That the temporary officers be made permanent.
2. That the report of the committee upon credentials be next considered.
3. That the convention shall then proceed to vote for the nomination of candidates for the various offices, prescribing the order. If it be a delegate convention, then the recommendation will be to vote upon the list of delegates.
4. Report of the committee upon resolutions.
5. Appointment of new county committee.
6. Adjournment.

266. Real Work of the Convention. — When the committees are ready to report, the chairman calls the convention to order, and the report of the committee upon organization and order of business is heard and acted upon. It is generally accepted, but, like any other report, may be amended. The chairman now thanks the convention for the honor conferred upon him, and the business is then transacted according to the plan laid down by the committee. The body of rules which guide the chairman in presiding over the convention is called "Parliamentary

Law." These rules had their origin in the British House of Commons, or Parliament, hence their name. They are essentially the same for all deliberative assemblies, and a good knowledge of, and some practice in, applying them is essential to make a successful presiding officer.

267. Nominations by Petition. — A little experience in the actual workings of the caucus and convention systems of nominating officers will convince one that there are serious objections to it. It requires the expenditure of a large amount of time on the part of the delegates and members of the committee, involves an outlay of considerable money, and, worse than all, offers an opportunity for the use of unfair means to accomplish selfish purposes. To avoid these evils several methods have been tried, that by petition or "nomination papers" being, perhaps, the most satisfactory. This method provides that a candidate may be put in nomination by filing with the proper officer a petition to that effect, signed by a specified number of qualified voters. This number varies in different states. In Iowa there must be at least five hundred for a state office, twenty-five for a county, district, or other division less than a state, and ten in a city, town, precinct, or ward. The nomination papers must be filed with the same officers as in the case of certificates from caucuses, primaries, or conventions. The minimum time limit for filing in the different states is from three to thirty-five days, and the maximum from forty to one hundred days, sixty days being the most common.

268. The Campaign. — After the nominations are made, each party puts forth every effort deemed necessary to secure the election of its candidates. At the fall elections,

which in most states are held on the first Tuesday after the first Monday in November, there is usually much more activity than when the election is held in the spring. This is especially true every four years, when both national and state elections are held at the same time. In addition to what the county committee may do, each candidate is supposed to look out for his own interest, and the newspapers take a very active part. All this costs money, which is secured by an assessment upon each candidate and by voluntary contributions.

269. The Election. — Upon such a day as the laws of the state direct the election is held in each township and ward precisely in the same manner as in the case of the township election (104–113). Within a certain number of days after the election has been held the township clerk, or some other officer designated by law, must file with the county clerk the returns for his township or ward.

270. Canvass of Votes. — At a time specified by law the county board of canvassers meets at the county seat, inspects the returns, enters the results in the records, and issues a certificate of election to the successful candidate. If there be no contest, the work of the board of canvassers is merely clerical. But where the results are close, the candidate who, upon the face of the returns, is defeated often demands a recount. The ballots are then sent for and brought from all the election precincts, and each set is carefully inspected to see that no error has been made. The decision of the board of canvassers may be appealed from, and sometimes the question is not settled until the highest court in the state has passed judgment upon it. The board of canvassers is variously constituted. In

Michigan it consists of three members appointed by the board of supervisors.

TOPICAL ANALYSIS

1. Calling the convention to order; appointment of committees.
2. Reports of committees.
3. Real work of the convention; Parliamentary Law.
4. Nomination papers.
5. The campaign.
6. The election.
7. Canvass of votes.

QUESTIONS AND EXERCISES

1. Organize your class into three or more wards, townships, or precincts, and hold a primary in each (*a*) for the purpose of nominating local officers, (*b*) to send delegates to a county convention.

2. Combine these sets of delegates into a county convention and hold it.

3. Elect delegates to a state convention with three or more counties represented.

4. Elect delegates to a national convention with three or more states represented.

5. Give the name of a member of the county committee of either party.

6. Who is the chairman of the state central committee of any party?

7. Why is it dishonorable to vote at a primary if you do not belong to the party holding it?

8. What great party has a two-thirds rule in its national convention?

9. To how many delegates in the national Republican convention is this state entitled? How many in the Democratic?

XXIV

ADMINISTRATIVE OFFICERS

271. Kinds of Officers. — An office has been defined as a special charge or trust created by competent authority. An officer is distinguished from an employee in the greater importance, dignity, and independence of his position, in being required to take an oath and perhaps to file a bond, and in the tenure of his position. A constitutional office is one provided for by the constitution of the state or nation. A ministerial officer has a line of conduct marked out for him, and has nothing to do but to follow it. A public office is an agency of the state, and a public officer is one whose duty it is to perform that agency. Executive or administrative officers are those whose duties are merely to execute the laws.

272. The Sheriff. — At the head of the administrative officers of the county stands the sheriff. The office is one of great antiquity, the term being derived from two Saxon words meaning the reeve or officer of the shire (243). As in England the sheriff has always done all of the king's business in the county, so in this country he is the business officer of the state. In this capacity he gives notice to the election officers of the date when the choice of state officers will be made; is the proper agent to procure the ballots in cases of disputed elections, and some-

times acts upon the board of canvassers. As the chief police officer he is called upon to quell riots; may call out all the male citizens above fifteen and under forty-five years of age to assist; and, in case it is necessary, the state militia is also placed under his command. He also has charge of the jails and takes care of the prisoners. In England he holds his office at the pleasure of the king, and generally for a long period; but with us his term of office is limited.

273. **Sheriff's Assistants.** — The sheriff is looked upon as the responsible officer, and gives a bond for the faithful performance of his duty. He is, however, required to appoint an under-sheriff, and also several other assistants called deputy sheriffs. Each one of these must give a bond to the sheriff as their superior, and are liable to removal at his pleasure. These assistants act under the direction of the sheriff, or in case of his absence from the county; but the official act of any one of them is considered the act of the sheriff, and in case he is disqualified to act, the coroner, or some other officer, not one of his assistants, takes his place.

274. **County Clerk.** — The county clerk has the same general relation to the government as the township clerk has to the township government (90). He is clerk of the board of supervisors, and, as a rule, of all the other county boards and commissions; he countersigns all orders drawn upon the county treasurer; issues marriage licenses, keeps a record of births and deaths and keeps on file all reports of the county officers. All official communications from the state officers to the township clerks are made through him.

275. **The Treasurer.** — The county treasurer, as the custodian of the county funds, must give heavy bonds, and usually can hold his office for only two successive terms. Under the township unit system he receives the money due the county and state (91), and forwards to the latter its share; distributes to the treasurers any money due their townships; and forces the collection of unpaid taxes by a sale of the property, if necessary. Under the county unit system the last mentioned duties are performed by a tax-collector.

276. **Register of Deeds.** — It is the duty of the register of deeds to enter upon books prepared for that purpose a copy of all deeds and real estate mortgages upon the lands of his county. These books contain a complete history of the titles to all the lands in the county. By means of abstracts (136), and from the indexes contained in the books themselves, the history of any particular description may be found.

277. **Superintendent of Schools.** — In the majority of the states there is elected in each county a superintendent of schools. It is his duty to hold public examinations and to issue certificates to those whom he finds qualified to teach; to hold institutes; to consult with school officers, and to make such reports to the state superintendent and to the county clerk as are required by law. Often he is assisted, especially in the examination of teachers, by two or more persons, who, together with the superintendent, form the county board of school examiners. This board is usually given the power to revoke certificates for any reason that would have justified them in withholding one. In most states women are also eligible to this office.

In addition to what may be called his purely professional work, the county superintendent in some of the states has other services of a very important business nature. In California, Arizona, and generally where the county is the unit (83), he audits accounts against school districts; appoints trustees to fill vacancies; apportions its share of the school money to each district; maintains the school in each district for five months when the school board fails to do so; requires the trustees to keep the schoolhouse and outbuildings in good repair and sanitary condition, and administers oaths to teachers and school officers. In Kentucky he is required to condemn any school building which is dilapidated, unhealthful, or otherwise unfitted to be occupied for the purpose of a common school.

278. **Other Administrative Officers.** — The coroner is an ancient officer of the crown, whose principal duty is to investigate the circumstances connected with deaths by violence, or when there is any suspicion of violence. In this capacity he acts as a judge, and the facts are inquired into by a jury which he is authorized to summon. In Michigan he takes the place of a sheriff when for any reason that officer is disqualified to act. In many of the states there is an officer called a public administrator, whose duty it is to take charge of the estates of deceased persons who have no heirs or devisees in the state.

A surveyor lays out and establishes the grades of highways; a drain commissioner looks after the construction and repair of ditches for removing surplus water from swamp lands; while in the arid states overseers are elected to construct irrigating canals, to regulate their use, and to apportion and distribute the water conveyed.

TOPICAL ANALYSIS

1. Officers and offices.
2. Administrative duties of the sheriff.
3. The sheriff's assistants.
4. The county clerk.
5. The county treasurer.
6. The register of deeds.
7. Superintendent of schools.
8. Other administrative officers: coroner, public administrator, surveyor, etc.

QUESTIONS AND EXERCISES

1. Suppose a fire should destroy the books in the register's office, how might this affect you?

2. How many grades of certificates are issued by the county board of examiners?

3. Why must every teacher in the public schools have a legal certificate?

4. Who can arrest the sheriff in this county?

5. Can a justice of the peace perform the duties of a coroner in this state?

6. Does the county clerk have a seal?

7. How many successive terms can a sheriff serve in this state?

8. If an abstract shows no flaw in the title, are you certain there is none?

9. Give the name of any other county officer.

10. Has the county superintendent in this state enough power?

XXV

THE COUNTY COURTS

279. Necessity for County Courts. — One of the chief purposes of the county organization is the better administration of justice, and in some states this is about the only object (247). This, however, is very important; for we should have scant security for person or property if suits involving large sums, and criminal actions where long terms of imprisonment are inflicted, were to be settled finally in the township courts, where the justices themselves are for the most part unlearned in the law. The resources of the township are too slender and the amount of business too small to maintain expensive suits in the courts, even if a sufficient number of learned judges could be found to preside over them.

280. Circuit Courts. — In all the states there are to be found county courts, variously called circuit, district, superior, and courts of common pleas, for the trial of the more important causes both civil and criminal, and to which appeals may be made from the decisions rendered in the township courts. Sometimes, as in Ohio, the civil and criminal causes are intrusted to separate courts. Courts are commonly divided into those of record and not of record, the former being provided with a seal and a clerk, the latter having neither. In courts of record the proceed-

ings are carefully written down, and the files of each case are preserved by the clerk to be referred to when necessary. A court of record has power to inflict a fine and imprisonment for a contempt of its authority. County courts are generally of record; townships courts are not.

281. Probate Courts. — Besides the ones already mentioned there is often a probate court presided over by a separate judge. It is usually called a probate court, sometimes the county court, and in New York the surrogate. In California the superior judge of the county has charge of the probate. The chief duty of this court is to care for the estates of deceased persons; to see that each claimant, whether an heir or a creditor, receives what is legally due, and to protect the widow and appoint a guardian for any child, weak-minded or insane person that may need some one to care for his estate. If the deceased left a will, an executor is appointed; if there was no will, the person is said to be intestate, and the judge appoints an administrator. Insane persons are also examined by a commission chosen by the probate judge. In addition to probate matters, this court is sometimes given a limited jurisdiction in civil and in criminal cases, and in some states the probate judge acts as superintendent of schools. An appeal lies from the probate to the circuit court.

282. Law and Equity. — There is also a distinction between a court of law and a court of equity, or, as it is sometimes called, a court of chancery. In a court of law the cause must be decided according to the strict requirements of the statute; but as this often defeats the real intent, a court of equity will, in some instances, disregard the strict letter of the law and grant relief. For example,

if a man should borrow a sum of money and give a deed of his homestead for security, as a matter of strict law the one who held the deed would own the land. But in the court of equity this instrument, which upon its face is a deed, would be considered a mortgage, and, before possession could be taken, the grantee would have to foreclose (135). Sometimes courts of law and courts of equity are presided over by separate judges, often by the same judge, and in some states the distinction is abolished. The final action of a court of law is called a judgment (184); that of a court of equity is termed a decree.

283. **Jurisdiction.** — In civil matters the circuit courts are given original jurisdiction (177), where the debt or damage exceeds $100; and in criminal cases, whenever the punishment for the offence is imprisonment for more than ninety days, or a fine of over $100 (187). When the amount of the debt, or the damage claimed, is between $100 and $300, the plaintiff can bring a suit either in the township or in the county court if he sees fit. In this case the jurisdiction is said to be concurrent. The orders of the justice of the peace cannot as a rule be enforced outside of the county in which they are issued; the orders of the county court are valid anywhere in the state.

284. **The Grand Jury.** — There are two kinds of juries in the circuit courts, — grand (large) and petit (small). The grand jury consists of not less than twelve nor more than twenty-three men, drawn from various parts of the county. This jury does not actually try causes, but examines into charges submitted by the judge, and determines whether there is reasonable ground to believe the accused to be guilty of the crime charged in the indictment, or accusa-

tion (188). If at least twelve of the grand jury think there is sufficient ground, the words "a true bill" (193) are indorsed upon the indictment, and the accused must stand trial. As no evidence is heard in favor of the accused, grand juries are little used in some states, their place being supplied by the preliminary examination of the justice of the peace.

285. **The Petit Jury.** — For the actual trial of causes the petit jury is employed. It consists of twelve electors who reside in different portions of the county, there being two panels, or twenty-four jurors in all, drawn each term of court, and who serve during the whole term. Upon the trial of any cause the jurors are subject to the same objections as in the township court (176), and if twelve indifferent men cannot be found among those summoned, talesmen are chosen. The verdict must be unanimous in criminal cases; but in civil cases in some states a greater or less majority decides.

286. **Supervisory Powers.** — Besides his duties in the trial of causes, the circuit judge may exercise supervision over township boards, county boards, and all public officers. Any proceeding had before a township or county board can be reviewed before the circuit court; and if for any reason the business has not been legally performed, it may be set aside. In the same way if there be any reason to suspect that a public officer has exceeded his powers, or has violated the law, he may be punished in this court. Offences of this kind may be inquired into upon complaint of any private person, or the judge may order the summoning of the grand jury for that purpose.

287. **Appeals.** — From the decisions of the county court

upon questions of law either party may appeal to a higher court (185). This is not the case as to questions of fact, for as to the facts the decision of a jury, or of the judge when there is no jury, is final. It is the application of the law to the facts and the admission or rejection of testimony that may be appealed from. The number of courts to which an appeal can be made from the county courts differs in the states, there being one in Michigan called the supreme court, and two in New York, the supreme court and court of appeal, the latter being the higher authority.

288. **Error.** — A writ of error is a command issuing from the appellate court, directed to the inferior court, and ordering the judge either to examine the record to see if there be not some mistake in fact by reason of which the judgment ought to be set aside; or to send the record to the appellate court to see if there has not been some mistake in law by reason of which justice would be defeated, if the judgment should be allowed to stand. If the decision should be against the validity of the judgment, it will either be set aside, or a new trial ordered, or the case will be dismissed entirely. In no event will a new trial be granted unless the protection of substantial rights require it.

289. **Mandamus.** — This is a Latin word meaning "we command you." It is directed to some person, corporation, or inferior court, requiring them to do something which it is their duty to perform, but which they are neglecting. It is by the use of this writ that courts oblige public officers to discharge the duties of their offices. If they refuse to perform an act which the law clearly requires, the superior will compel obedience.

290. **Injunctions.** — The writ of injunction is a judicial order whereby a party is personally required to refrain from doing, or to perform a particular act, as to which the party asking the injunction has a clear right. It generally prevents rather than restrains, but may do either. Armed with a writ of injunction, an officer can prevent a man from making an inflammatory speech, can disperse a mob, or require a person to retain possession of securities which are claimed by another.

291. **The Circuit Judge.** — The highest judicial officer in the county is the circuit, district, or superior judge. This position is a very important one, as upon the judge, more than upon any other officer, depends the vigorous enforcement of the law. He must be an attorney, should have had a long experience in active practice, must be a man of the very highest character, and should have a good education so that he may be able to express himself clearly and forcibly in his written opinions. He is paid a salary, usually holds his office for at least six years, and is often reëlected without reference to his political belief. Writs of *mandamus*, *habeas corpus*, and injunction may be issued by the circuit judge.

292. **The Sheriff as Court Officer.** — In addition to the duties already mentioned, the sheriff has the same relation to the county court as the constable has to the township court (87). The former can, however, serve the orders of the county court in any part of the state; but the authority of the latter is confined entirely to his own county, and he may not act as an officer in the circuit court. Either the sheriff or one of his assistants is present at every session of the circuit court to preserve order.

293. **The Clerk as Court Officer.** — A very important part of the county clerk's duties is to act as clerk of the circuit court. He makes out all the writs, keeps the records, preserves the papers relating to each cause in a separate file, attends to the drawing of the jury, and performs all other duties that are merely clerical in their nature. In the actual trial of a cause, the evidence as given by the witnesses, the charge of the judge, and in some cases even the arguments of the lawyers are taken down *verbatim* by the court stenographer.

294. **Attorneys at Law.** — For the assistance of those who have causes to try, there is a class of court officers known as attorneys at law. An attorney must be twenty-one years of age, must have passed an examination for admission to the bar, as a rule must be a citizen of the state, must take the oath prescribed by law. In many states graduates of law schools are admitted to practise upon their diploma and without an examination by the court. An attorney of one state is not permitted to practise in the courts of a neighboring state unless he be regularly admitted to the bar, or unless upon special motion by some reputable attorney he be granted a special privilege by the court to try a single case. In Florida one who is permitted to practise in the circuit court of the United States may practise in the state court. If an attorney be guilty of unprofessional conduct, he may, upon conviction, be disbarred.

295. **The County Attorney.** — When any one is charged with a crime he must stand trial, and as in every county there is certain to be quite a number of these cases during the year, one of the attorneys is elected by popular vote to

take charge of them. It is also the duty of the county attorney to prosecute or defend any action in which the county is interested, and to give advice to county officers when requested. As the greater part of the time is taken up in prosecuting those charged with crime, he is often called a prosecuting attorney. This title, however, is misleading, for it is as much his duty to protect an innocent prisoner as it is to secure the conviction of a guilty one. Like the judge, he is paid a salary.

296. Court Commissioners. — In most counties, and especially where several are joined for judicial purposes into one circuit, there is more business than the judge can find time to do. He is, therefore, given assistants in each county, called commissioners, who have authority in certain cases to act in his place, subject, however, to appeal. Whenever, also, there is a question to be decided which does not require the exercise of judicial discretion, as finding the amount due on a mortgage, the commissioner does it. These officers must be attorneys.

TOPICAL ANALYSIS

1. Necessity for courts higher than the justice's.
2. Courts of record and not of record.
3. The duties of probate court.
4. Law courts; equity courts.
5. Jurisdiction: original, appellate, concurrent.
6. The grand jury; the true bill.
7. The trial jury.
8. Supervisory control of officers and board by the circuit judge.
9. Appeals to the supreme court.
10. How a judge may be compelled to correct his own mistakes.

11. Any person may be compelled to do his duty.
12. How a person may be prevented from doing wrong.
13. Qualifications for a circuit judge.
14. The sheriff as court officer.
15. The clerk as court officer.
16. Attorneys at law.
17. Court commissioners.

QUESTIONS AND EXERCISES

1. When would a knowledge of chemistry be useful to a judge?
2. What is meant by "government by injunction"?
3. Is a grand jury regularly summoned in the courts of this state?
4. Who is "a professional juryman"?
5. Should a circuit judge travel on a railroad pass?
6. What are the conditions for admission to the bar in this state?
7. State a case where an attorney ought to be disbarred.
8. If the jury renders a verdict contrary to evidence, what course may the judge pursue?
9. Has the judge a right to question a witness? May a juryman question a witness?
10. State a case which must be tried by a court of equity.

XXVI

THE TERRITORIES

"The territories of the United States are quite different from the colonies of ancient or modern times; the territory is an inchoate state, and has been a powerful factor in the development of the nation." — HINSDALE, *American Government*.

297. **Historical.** — The thirteen original states whose independence was recognized by Great Britain in the treaty of Paris, signed September 3, 1783, practically occupied only the country lying between the Alleghanies and the Atlantic, and to this strip the British ministers attempted to confine them. The colonial governments, however, claimed all the country lying between the Alleghanies and the Mississippi River, and this was finally conceded. By 1802 (63) all the last-mentioned territory had been ceded to Congress by the states, with the understanding that it should be under the control of the national government until such time as it could, portion by portion, be prepared for self-government and admitted as separate states into the union. By separate additions the original Mississippi boundary has been pushed westward on the continent to the Pacific, south to the Gulf of Mexico, and Alaska, Hawaii, Porto Rico and the Philippines have been added.

298. A European Colony. — Previous to 1787 (224) the colonial possessions of a nation were looked upon as so much property, to be disposed of in any manner, and upon such terms as the owner should see fit. They could be bought, sold, and transferred upon the same principle as real or personal property, and without consulting the inhabitants. The central idea in acquiring territory, in planting colonies, or in disposing of them was simply one of commercial or military advantage. Usually the colonists were given more or less power to control their local affairs; but the extent of it depended entirely upon the policy of the superior government. England has, when it was considered practicable, always granted considerable privileges in this direction; but such has not been the policy of Spain. In theory, and in practice also in all except the more important ones belonging to Great Britain, a European colony is simply a subject province.

299. An American Territory. — An American territory is one of the districts in which, for the purpose of local government, the public domain is divided. The word "territory" is here used in a narrow sense, as including only that part of our dominions not organized into a state, and which is the property of the whole nation. A territory may be unorganized, in which case the people have nothing to say in the management of the local affairs; or it may be organized, when nearly everything pertaining to the local government is left to the people. Every state in the union, except the original thirteen and Texas, has passed through the last of these stages on its way to statehood; many have passed through both, and it has been the policy of Congress to encourage this progress. In an American

territory the central object (298) is to secure the peace, prosperity, and true happiness of the people by cultivating a spirit of self-dependence.

An American territory is looked upon as an embryo state, to be admitted to statehood as soon as it shall appear to Congress that the conditions will warrant it. Alaska, the Indian Territory, and the Philippines are unorganized. The District of Columbia can hardly be called a territory, but is simply a piece of land, which the whole nation will always own as a site for the national capital. Its laws are all made by Congress; the executive duties are discharged by three commissioners appointed by the President, and confirmed by the Senate; it has a special system of courts, and none of the inhabitants may vote. All the rest of the territories are organized, and each sends a delegate to the national House of Representatives, who may speak upon any question which affects the particular territory he represents, but cannot vote (399). A territory has no representative in the United States Senate.

300. **The Constitution of a Territory.** — The fundamental law, or constitution, of every territory is the act of Congress which organized it. The constitution of a territory resembles the British constitution in this, that it can be altered whenever the national legislature sees fit. The general nature of our territorial form of government was fixed by the Ordinance of 1787 — "the Magna Charta of the West" (224). It provided for a governor and three judges to whom, subject to the approval of Congress, the executive, legislative, and judicial duties were intrusted. The Ordinance, however, provided that when the free male inhabitants should reach five thousand, the form of

government should be made to accord more with republican ideas. In addition, a territory, as in the case of Arizona, sometimes adopts a "Bill of Rights," which stands in the place of a constitution. Of course this must not conflict with the Constitution of the United States, nor with any act of Congress passed either before or after the adoption of the Bill of Rights.

301. An Unorganized Territory. — The latest example of how the United States seeks to introduce a form of civil government into new territory is found in the Philippines. After they had been reduced to order by the military, a commission of five members was appointed by the President to act under the general instruction of the Secretary of War. This commission was instructed first, to organize local governments to correspond with those of our townships, villages, and cities; and second, to combine these subdivisions into larger ones like our counties. In the distribution of powers all that could properly be exercised by the smaller divisions were to be granted to them; powers of a more general nature were to be given to the larger districts; and the superior government in the islands, after the manner of our states, was to deal only with those subjects that concerned the people as a whole. In an unorganized territory the commission exercises all these general powers, — legislative, executive, and judicial. A primary school system was to be established, and the course of study was to be of such a character as should tend to fit the people for the duties of citizenship, and for the ordinary vocations of civilized life. Instruction was to be given at first in the language of the people; but a full opportunity was to be offered to all to acquire the English

language. The citizens have no rights except such as Congress may choose to grant.

302. An Organized Territory. — The governmental machinery in an organized territory very much resembles that in one of our states. Some differences will always be found; but if one is familiar with the general features of the township and county unit systems, a little experience will enable him to learn them very readily. The general government of an organized territory is divided into three departments, — legislative, executive, and judicial. The legislative department consists of a house of representatives of twenty-four members, and a council of twelve members, each being chosen biennially by the people from districts. There is one regular session every two years, its length being limited to sixty days, and each member receiving $4 per day for his services.

The range of subjects intrusted to the territorial legislature is substantially the same as in the states, but its enactments can be vetoed by the governor and by Congress as well. Congress, however, rarely ever interferes when the proposed law is local in its nature. Thus it is that the regulation of township, city, and county officers, the support of public institutions, the punishment of offences against either public or private law (160), and even the procedure in the courts is controlled by a legislature the members of which are elected by the people.

303. Executive and Judicial. — The chief executive officer is the governor, who is appointed by the President with the consent of the Senate (391). He has far more power than has one of the governors of a state, for he appoints and removes at pleasure such officers as the territorial

treasurer and superintendent of public instruction, who in the states are elected by a popular vote. He appoints all the members of the various boards and commissions, recommends the passage of laws to the legislature, and may pardon convicted criminals or commute their sentences. He makes an annual report to the President in which the advantages and resources of the territory are set forth in a light well calculated to convince the unwary that the territory is more than well prepared for admission as a state.

For judicial purposes a territory is divided into three districts, each of which is presided over by a judge appointed by the President and confirmed by the Senate for a term of four years. These judges hold regular terms of court in the several counties of their districts, and appeals will lie to these district courts from the justice's courts. The supreme court of the territory consists of these three judges sitting together at the capital. Both the governor and the judges are paid by the general government, but the remaining officers are paid by the territory. An appeal may be taken from the supreme court of the territory to the supreme court of the United States.

304. **Local Life.** — If you were to be suddenly transported from one of the older states to the more thickly settled portions of one of our territories, you might not at once discover any great change in your surroundings. The stores, churches, schoolhouses, and private dwellings would have a familiar look; the dress, general appearance, and manners of the people would not be at all strange; they would be engaged in about the same occupations, and everywhere you would hear the English language

spoken. A little further acquaintance, especially in the newer portions, would convince you that the conditions of life are harder than in the older states. The common laborer and those who receive small salaries are better paid than elsewhere; but those who occupy the higher positions receive less, and the cost of living is greater.

As to the enjoyment of the passive rights of citizenship, there is no difference anywhere in the country, and the citizens of an organized territory are entitled to freedom of trade with the states. Here, as everywhere, the law gives its equal protection to person and to property; and these laws are enforced by courts organized upon the same plan and endowed with the same powers as in the states. In the newer portions there is more lawlessness; but ordinarily a person gets along well enough if he behaves himself.

In the exercise of their local political rights there is no difference. All the local officers are elected at regular intervals, and usually by the Australian ballot system; the caucus is followed by the primary, and that by the convention; and the campaign is carried on with spirit, and sometimes without much principle. As to the management of national affairs, the people have no voice, for they have no vote. They are, however, always greatly interested in the result, for a new President means a new governor; this in turn means new territorial officers throughout; and if a new political party comes into power, new judges will follow in time. No portion of the country is affected so quickly and so greatly by a change in the administration as is one of the territories. The people are nearer the national government than they are in the states.

305. **Admission to Statehood.** — The Constitution of the

United States gives Congress power to admit new states, the only restriction being that "no new states shall be formed or erected within the jurisdiction of any other state, nor shall any other state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress" (Art. IV, § 63). Since the admission of Ohio, Congress has usually passed an enabling act, and required the territory applying for statehood first to adopt a constitution republican in form. It has also been the rule not to admit a state until the number of inhabitants was sufficient to entitle it to one representative; but this requirement has not always been observed. On the other hand, Utah was denied admission until long after it had the requisite number of inhabitants, because of Mormonism with its practice of polygamy.

TOPICAL ANALYSIS

1. The terms upon which the colonial governments ceded their lands to Congress.
2. The European idea of a colony.
3. The central idea of an American territory.
4. The constitution of a territory.
5. Form of government in the Philippines.
6. A territorial legislature.
7. The executive and judicial departments of a territory.
8. Local life in a territory; passive and active rights of citizenship.
9. Admission to statehood.

QUESTIONS AND EXERCISES

1. What is the difference between an inchoate and an embryo state?
2. Give three definitions for the word "territory."

3. What subjects in a school course are best adapted to fit the people for the " ordinary avocations of life " ?

4. Under what circumstances was West Virginia admitted as a state ?

5. If the people of Utah should again attempt to practise polygamy, could Congress make that state a territory once more ?

6. Point out the advantages which a state has over a territory.

7. Under what circumstances would the territorial form of government be preferable ?

8. Are the territories permitted to send delegates to a national convention ?

9. When was this state admitted to the union ?

10. Did Congress pass an enabling act for the admission of California ?

Part IV

The State Government

CHAPTER XXVII. **One of the United States**

CHAPTER XXVIII. **The Executive Department**

CHAPTER XXIX. **Aids to the Executive**

CHAPTER XXX. **The Legislative Department**

CHAPTER XXXI. **The Judicial Department**

XXVII

ONE OF THE UNITED STATES

"To balance a large state or society, whether monarchical or republican, on general laws, is a work of so great difficulty that no human genius, however comprehensive, is able by mere dint of reason and reflection to effect it. The judgments of many must unite in this work. Experience must guide their labor, time must bring it to perfection, and the feeling of inconveniences must correct the mistakes which they inevitably fall into in their first trial and experiments." — VON HOLT'S *Constitutional History*.

306. Definition of a State. — A state is a political community, permanently residing within definite limits of territory, and exercising over the people therein a humane control by means of self-imposed laws. The chief object of this community must be to deal with those subjects which are essentially political (18). This would exclude such organizations as the Massachusetts Bay Company, because its object was commercial. At least a part of the laws must be self-imposed, and there must be a central authority capable of enforcing them. This would leave out of consideration such a political division as a county, for all of its powers are derived, mediately or immediately, from a higher authority. The notion of control, unlimited to a certain extent, over a definitely described portion of the earth's surface, is so intimately associated with the

idea of a state as to exclude all nomadic tribes, no matter how civilized. The word "humane" must be construed liberally; but a community of cannibals would not under any circumstances be considered a state.

307. **A Sovereign State.** — When the laws which govern the state are all self-imposed, it is then said to be sovereign, or independent. The United States is an example. Neither Vermont, Kansas, nor any of the individual states of the union are, or ever were, absolutely sovereign, because all the laws are not, nor ever were, self-imposed. When the Constitution of the United States was adopted (223), the people of each state gave to Congress the right to legislate upon certain classes of subjects, and thus united to form a new nation. Over their internal affairs the authority of the individual state is unrestricted; but no one of them ever pretended to have a right to deal independently with foreign states, and to this extent at least were not sovereign.

308. **Boundaries.** — Every state must have certain well-defined boundaries, within which its laws are supreme, and outside of which they cannot be enforced. Sometimes these boundaries are natural, as a river, a mountain range, a chain of lakes, or the ocean. Often, however, two states are separated by an imaginary line fixed by the surveyor; but usually there is a combination of the artificial and the natural. Between European nations the boundaries are for the most part natural, while those between the several states of the Union combine both features, the artificial perhaps predominating between the newer ones.

309. **Colonial Charters.** — The early settlers of the thirteen

original states derived their authority to exercise the powers of government from the colonial charters issued by the British government. Perhaps the most important of these was that granted to Massachusetts Bay by King Charles I; for under it the people of that colony claimed and exercised for years the right to govern themselves. This charter gave power to the members of the company to choose annually from their own number a governor, deputy governor, and eighteen assistants. They could make laws for the government of the territory which they owned; but these laws must not conflict with those made by Parliament.

310. **State Constitutions.** — The constitutions of the several states are the offspring of the colonial charters. The fundamental law of every state is its constitution, which in America is really nothing but a law made directly by the people voting at the polls upon a draft submitted to them. Just as a resolution passed at a New England town meeting (81), upon a subject within the scope of its authority, is binding upon the people in the township and the officers, so the provisions of a constitution, adopted by a vote of the people of the whole state, is binding upon all the inhabitants, including public officers. The people can adopt a new constitution or amend an old one when the subject has been properly submitted to them by the legislature.

311. **Provisions of a Constitution.** — The constitutions of most states may be readily classified into five divisions: —

1. The definition of the boundaries of the state.

2. The so-called Bill of Rights, which is an enumeration of the citizens' rights of personal liberty, personal security, private property, and religious belief and worship (4–10).

3. The frame of government, *i.e.* the names, functions, and powers of executive officers, legislative bodies, and courts of justice.

4. Miscellaneous provisions relating to administration and law.

5. The schedule, which provides for submitting the draft of the constitution to the people, and for the transition from the condition of a territory to that of a state.

312. **Interpretation of the Constitution.** — If the question arises whether a state legislature can pass a law on a given subject, the presumption is that it can. This is always the case unless the power has been taken away by some provision in the constitution of the state or of the United States. But it must be shown that a provision forbidding it actually exists. The constitution of the state is not a document conferring defined and specified powers on the legislature, but one regulating and limiting the unlimited power which it would otherwise possess. The power of the British Parliament has no bounds, for there is no written constitution to restrict it. Such, however, is not the case in this country.

313. **Miscellaneous Provisions.** — All the constitutions contain articles treating of schools, of the militia, of taxation and revenue, of public debts, of local government, of state prisons and hospitals, of impeachment, and of the methods of amending the constitution. Among the provisions which are found in some constitutions, but not in others, are those regulating the salaries of officials, the carrying of concealed weapons, the teaching of white and colored children in the same school. We also find a prohibition of lotteries, of bribery, of the granting of liquor licenses, of usurious interest, and a declaration of the extent of the mechanic's lien.

314. The Initiative. — Among the latest additions to constitutional provisions are the initiative and referendum. The initiative is a method of forcing the legislature to submit to popular vote for adoption or rejection a draft of the law which a certain number of people desire to have enacted. Such a provision is found in the constitution of South Dakota, which provides that when five per cent of the voters shall petition for it, the legislature shall submit the question of adopting a law upon that subject to a popular vote. If a majority shall decide in its favor, then the following legislature will simply act as a committee to pass a bill in harmony with the will of the people as previously expressed.

315. The Referendum. — This means referring the law passed by the legislature to the people for their ratification or rejection. This method provides that, before the acts passed by the legislature have gone into effect, upon petition of a certain number of voters, an election shall be ordered so that the people may express their sentiments on any one or more of the laws passed by that session of the legislature. If a majority shall approve, the same shall remain as enacted; if a disapproval be expressed to any one or more enactments, the same shall be considered dead, just as at present the governor or president may kill a bill by veto. A local option law, or a constitutional amendment submitted to the people, is an example of a referendum.

316. Resources. — The revenue of the state is derived from the property of its subjects, and is collected by taxation (123). For its support and preservation all the property in the state is looked upon as belonging to all the people. In the seven years' war which Prussia waged

against the combined forces of France, Austria, and Russia, Frederick the Great used up half of the property in his kingdom, and destroyed the lives of thousands of his subjects; but this was justifiable because the life of the kingdom was at stake. Ordinarily the rate of taxation which the government is obliged to levy for its support is very small, the larger portion of the annual tax being for local purposes.

DEFINITIONS OF "UNITED STATES"

1. The corporate (76) name of the nation. The same as was provided in the Articles of Confederation.

2. The states united, referring to the several states composing the union. In this sense it excludes the territories.

3. The international sense, designating the extent of our domain as a sovereign nation. This includes all our territory wherein no other nation has sovereignty, even such as may be under our control by temporary conquest. — Ex-Attorney General Griggs.

TOPICAL ANALYSIS

1. Time and experience necessary to make good laws.
2. Definition of a state.
3. A sovereign state.
4. Boundaries: natural, artificial.
5. Colonial charters.
6. State constitutions.
7. Five parts to a constitution.
8. Interpretation of a constitution.
9. Miscellaneous provisions.
10. The initiative.
11. The referendum.
12. The resources of a state.

QUESTIONS AND EXERCISES

1. Give a short sketch of Frederick the Great.
2. Cite another instance where excessive taxation was justifiable.
3. What was the fate of Charles I of England ?
4. From a tax receipt find the rate for state purposes.
5. Compare the constitution of your own state with that of some other, and find some provisions that are not common to both.
6. What one of the American states was organized upon the principle of a pure theocracy ?
7. Mention five powers which the Constitution of the United States forbids the individual states to exercise.
8. Debate the following question : —

"Resolved that this state should adopt the initiative and referendum."

9. What peculiar meaning has the word "definition" in paragraph 311 ?
10. Read over the Bill of Rights in the constitution of this state.

XXVIII

THE EXECUTIVE DEPARTMENT

317. The Counties Combined. — Just as we may look upon the county as being composed of several townships united for local government and for judicial purposes (244), so we may consider the state as composed of several counties combined for general government and for judicial purposes. The objection to this view is that it turns our attention too strongly to the machinery by which the state (the whole people) administers the government. This machinery consists of the various officers acting according to certain laws which have been established for their guidance.

318. A Business Association. — We may also observe that, like a city, the state is both a political and a business association. It is its duty not only to protect the citizen in the enjoyment of his absolute rights (4), but to promote the general welfare. Universities are founded, charitable institutions are established, prisons are maintained, and sometimes the state even does its own printing, and carries on other business enterprises. All this requires a great amount of money to be expended in the payment of salaries, in the purchase of supplies, and in the disposing of the manufactured products. To conduct this business calls for constant oversight, which falls upon the executive department (21).

319. **Local Agents of the State.** — We must not commit the error of thinking that all the state's business is performed by state officers, for they are greatly assisted by the local officers. The township treasurer collects the state taxes, pays them over to the county treasurer, who in turn transmits them to the state treasurer. The county school superintendent receives the reports from the township or district officers and forwards them to the state superintendent of public instruction. The election machinery of the township and county is made use of in the choice of state officers, and thus it is that comparatively few separate state officials are required.

320. **The Governor.** — Although the governor of one of the states does not have as much power as does the governor of one of the territories (303), yet he is the most important officer in it. The word "governor," by derivation, means the helmsman of a ship, and it is the duty of the chief executive to see that the "ship of state" sails safely on her course. The duties of a governor are civil, military, legislative, and judicial.

1. *Civil Executive.* — As the chief civil officer the governor has a general authority given him to see that the business of the state is properly transacted by his subordinates. To aid him in this he may require information from any of the departments upon any subject relative to its respective duty. He appoints a large number of assistants, sometimes without, but generally with, the advice of the senate; and he can remove even a township officer for a violation or neglect of duty, unless there be some other method provided by law.

2. *Commander-in-chief of the Militia.* — As commander-

in-chief of the state militia, the governor appoints the superior officers, including those who serve on his staff; reviews the troops; serves on the military board, and superintends the enlistment of men to fill the state quota as called for by the President in time of war. His power as military chieftain is often of great value in time of riots.

3. *As Legislator.* — As a member of the legislative department it is the duty of the governor, at the beginning of each session and at such other times as he may deem advisable, to inform the legislature in a written message as to the condition of the state, and to recommend the passage of such laws as will further the general interests.

After a bill has passed both houses, in all the states but four, the governor may prevent its becoming a law by a veto, unless both houses again pass the bill by a two-thirds vote. This power, exercised quite freely by some of the governors, often prevents the passage of a bad law, and always gives the legislature an opportunity for more careful consideration.

4. *Judicial Duties.* — As a judicial officer the governor may grant reprieves, commutations, and pardons for any offence except treason. He may also assist the courts in the arrest of persons charged with crime. By the Constitution of the United States (Art. IV, § 2), a fugitive from justice found in another state shall, upon the demand of the governor of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime. If the act charged to have been committed be not considered a crime in the state where the one charged has taken refuge, the governor will sometimes refuse to honor the requisition.

In a similar manner, by means of treaties negotiated by the United States, fugitives from justice may be arrested in foreign countries.

321. **Qualifications of Governor.** — All the states require that the governor shall be a citizen of the United States, and a resident of the state for a certain number of years, generally five, next preceding his election. In California he must be at least twenty-five years old, and elsewhere the minimum is usually fixed at thirty. He can hold no other office in his own state while he is governor, nor any under the United States. All his official acts, except his signature to the acts of the legislature, must bear the impress of the great seal of the state. The governor's salary ranges from $1000 in Rhode Island to $10,000 in New York, and the term of office varies from one to four years.

322. **The Lieutenant Governor.** — In case of the removal of the governor from office by impeachment or death, or when he is unable to attend to the duties of the office, or is absent from the state, in all but eleven of the states the powers of the chief executive devolve upon the lieutenant governor. In most of the states this officer acts as president of the senate. In committee of the whole he may debate all questions; and when there is an equal division in the senate, he may give the casting vote. In case both the governor and the lieutenant governor are disqualified, the president *pro tempore* of the senate acts as governor.

323. **Removal from Office.** — For corrupt conduct in office, or for crimes and misdemeanors, the governor or the lieutenant governor may be impeached. The court

before which the case is tried is the senate. A committee is appointed by the house of representatives to prosecute the case, and both this committee and the accused are entitled to counsel. Two-thirds of all the senators must concur before a conviction can be secured. The judgment of the senate extends only to removal from office, after which criminal proceedings may be begun before a proper court. The senate here acts as a court with power to send for persons or papers, and the secretary of state is the clerk.

TOPICAL ANALYSIS

1. The state viewed: —
   - (1) As a combination of counties.
   - (2) As a coöperative business association.
2. The assistance rendered by local officers.
3. The governor as: —
   - (1) Chief civil officer.
   - (2) Commander-in-chief of the militia.
   - (3) Legislator.
   - (4) Judicial officer.
4. Qualifications for governor.
5. The lieutenant governor.
6. Impeachment.

QUESTIONS AND EXERCISES

1. Make a list of the powers granted to the governor in the constitution of your state.

2. As a judicial officer ought the governor to act in connection with a board of pardons?

3. Was a governor ever tried in this state by the senate sitting as a court of impeachment?

4. How can a constable be removed from office in this state?

5. What is the difference between a reprieve and a pardon?

6. What is a "pocket veto"?

7. If one governor should refuse to deliver a person charged with crime to the officers presenting proper requisition papers, what could be done about it?

8. What officers constitute the governor's staff in this state?

9. Could a man born in England be governor of this state?

10. In what way must a governor communicate his views to the legislature?

11. Mention some country with which the United States does not have an extradition treaty.

XXIX

AIDS TO THE EXECUTIVE

324. Number of Departments. — While the executive department, strictly speaking, consists of the governor, or some one acting in his stead, yet there are certain officers so closely connected with him in an official capacity that they are commonly thought of as forming a part of it. Several of these are always specified in the state constitution, and are elected by popular vote; but often the legislature has power to add others, who are usually appointed by the governor with the consent of the senate. Each officer has a deputy, and there are numerous clerks to render such assistance as is necessary. These officers are very useful to the members of the legislature, by reason of the information which they are able to give of the working of the state government.

325. The Secretary of State. — Next in importance to the lieutenant governor comes the secretary of state. It is in his office that the great seal is kept, an impression of which is necessary to the validity of all the official acts of the governor; here the original copies of the acts of the legislature are deposited, and here the reports of all corporations doing business in the state are filed, and also duplicate reports of justices of the peace and sheriffs to the county clerks. The secretary of state supervises the taking of the state census, issues patents for state lands,

and approves of the bonds of certain officers. He notifies the sheriffs when any state officers are to be elected, or when amendments to the state constitution are to be submitted to the people; and he furnishes the proper blanks for the election returns. This officer bears the same relation to the state government that the county clerk does to the county government (274), and on the judicial side he is clerk of the court of impeachment.

326. **The State Treasurer.** — The state treasurer is the receiving officer and the custodian of the state funds. The state taxes collected by the county or township tax collectors are payable to him. He is authorized to deposit the money with banks giving sufficient security; but any interest derived from its use belongs to the state. No money can be paid out by him, except upon a warrant signed and countersigned by those duly authorized. He is the state sealer of weights and measures. He must give a bond for the faithful performance of his duties, and must make an annual report to the governor.

327. **The Auditor General.** — The auditor general settles certain claims against the state, and draws his warrant therefor upon the state treasurer; examines, adjusts, and settles claims in favor of the state, and examines the accounts of the state treasurer each month. He receives and files plots of towns, cities, and villages; approves the bonds of county treasurers, and of certain other officers; makes a final report to the governor, and is a member of certain boards. He apportions the state tax, and notifies the clerk of each county of the amount due the state from his county. He has charge of the sale of delinquent lands for taxes, and executes deeds to purchasers.

328. **The Attorney General.** — The attorney general is the chief law officer of the state. He is required to prosecute or defend all actions in the supreme court in which the state shall be interested; and when a proper request is made, he appears either in person, or by deputy, for the people before any court or tribunal in any matter, civil or criminal, in which the state, or any department thereof, is interested. He is the legal advisor of each county or district attorney, and may be called upon to give an opinion to the various state boards, or to state officers.

329. **The Superintendent of Public Instruction.** — This officer has general supervision of the schools of the state. He apportions the primary school interest fund, and all other funds that may come into the hands of the state treasurer for general school purposes, to each county; gives information to school officers upon the meaning of the state school law; prepares and furnishes blanks for school reports, and may require reports from city and county schools and from chartered educational institutions. The questions for the county examinations of teachers and pupils are usually prepared in his office; and he is a member of the state board of education, whose duty it is to hold examinations and grant certificates authorizing the holders to teach in any portion of the state. He supervises teachers' institutes, publishes the school laws, and makes an annual report to the governor.

330. **Commissioner of Insurance.** — One of the most important of the administrative departments in very many of the states is that of insurance, which is under the charge of a commissioner. Upon the formation of a new company it is the duty of a commissioner to examine the

articles of incorporation to see if they conform to the laws of the state; to make frequent examination of the affairs of the companies to see if they are solvent, and, if they are not solvent, or if they are doing business in an illegal manner, to take away their charter. In case of insurance companies organized according to the laws of some other state or country, he must require annual reports; he may also inquire into their condition, and if he does not deem the showing a safe one, he may refuse to issue a license. Every one who carries an insurance policy, either upon his life or upon his property, is greatly interested in having the duties of this office carefully performed.

331. **The Railroad Commissioner.** — Another very important branch of business which appeals to a very large number of people in the state is that of the railroads. The amount of capital invested is enormous, the number of employees is very great, and in the course of a year a majority of the citizens ride upon the cars, besides immense quantities of freight are transported. It is, therefore, very desirable that there should be some officer designated by law to exercise a general oversight. This is done by the commissioner of railroads, whose duty it is to receive their reports, inspect their tracks, bridges, buildings, and other structures so as to know that they are in a safe condition; to report all accidents resulting in the loss of life, and to investigate the same; to regulate the speed of trains, and to see that proper danger signals are maintained at street crossings and elsewhere. He also computes the amount of taxes that the companies must pay, and reports the same to the auditor general.

332. **Administrative Boards.** — In every state there are

certain boards, created either by the constitution or by statute, to each of which important interests are confided. Among these are the state board of convassers, to canvass the election returns from the various counties in so far as they pertain to the election of state officers, or to the adoption or rejection of constitutional amendments; the board of health, which may even declare a quarantine against travellers or freight from another state (100); and the board of equalization, which fixes the valuation of the counties, of the railroads, and sometimes of mining and other corporations as a basis for the assessment of state taxes. Besides these, the various state educational and reformatory institutions are usually controlled by separate boards. There is a board of pardons, which makes recommendations to the governor when convicted criminals apply to be released. Membership in these boards is obtained *ex officio*, by popular vote, or by appointment from the governor, with the consent of the senate. In Massachusetts and New York, government by administrative boards is much favored, and its popularity is growing in other states.

333. **The Militia.** — Just as the sheriff may call out all the citizens between the ages of fifteen and forty-five to preserve the peace of the county (272), so the governor may place under arms all the citizens between these ages to preserve the peace in any portion of the state. The former is called the "power of the county," the latter the "enrolled militia," which is armed and equipped at the expense of the state. At stated periods, usually once each year, the active militia goes into camp, and is drilled for a few days in accordance with the tactics of the United

States army. The soldiers receive free transportation and pay during the encampment. The companies belonging to the several regiments are located in different parts of the state, the members are residents, meet for drill generally once each week, and are exempt from service on a jury (176). The state militia is governed by the state military board, of which the governor is a member *ex officio*. This body of troops forms a part of the National Guard, and can be called upon by the President to go into any part of the Union; but no member is obliged to go outside of the United States unless he chooses to volunteer in the regular army.

334. **The State Library.** — At the capital is found the library, which, in the older states, is a very valuable collection of books. Its main use is for reference, and if you wish to consult any work upon history, law, or science, you can usually find it here. In the law department there are text-books upon all subjects, as well as the reports of the decisions of the supreme courts of the individual states, of the United States, and also of some foreign countries.

In connection with the state library some states maintain a system of travelling libraries. These are sent into different parts of the state when the proper officer calls for them, to be returned after a certain length of time, when they can be replaced by another set of books. This library is under the charge of a librarian, who is usually appointed by the governor and confirmed by the senate. As the office is one which requires special knowledge and skill, the question of politics has little to do with the appointment.

TOPICAL ANALYSIS

1. Number of executive departments; other administrative departments.
2. The secretary of state.
3. The state treasurer.
4. The auditor general.
5. The attorney general.
6. The superintendent of public instruction.
7. The commissioner of insurance.
8. The railroad commissioner.
9. Administrative boards.
10. The militia.
11. The state library.

QUESTIONS AND EXERCISES

1. Mention five steps in the election of state officers.
2. How many terms can the state treasurer hold his office?
3. What salary does the governor of your state receive?
4. Why should a state officer be paid only a moderate salary?
5. In what manner does the board of health, or the chief health officer, in a state assist the local boards?
6. What is the difference between a prison and a reformatory?
7. How does old line insurance differ from mutual benefit?
8. What pay does a member of the militia receive?
9. Make a list of the different school officers in this state, and give briefly the duties of each.
10. Give the names and location of the various educational institutions which are supported in whole or in part by state tax.

XXX

THE LEGISLATIVE DEPARTMENT

335. **Bicameral.** — The law-making department in every state but one is called the legislature. In Massachusetts it is called the general court. In every state the legislature consists of two bodies, the smaller being termed the senate. Generally the larger branch is named the house of representatives, but in New York it is the assembly, and in West Virginia it is styled the house of delegates. In six states the legislature meets annually; elsewhere, biennially.

The number of members composing each branch varies, Delaware having the smallest senate with twenty-one members, and Illinois the largest with fifty-one. Delaware also has the smallest house of representatives, twenty-one members, while New Hampshire has three hundred and twenty-one, which is the largest. The New York houses number thirty-two and one hundred and twenty-eight, respectively; those of Massachusetts, forty and two hundred and forty; and those of Michigan, thirty-two and one hundred. A quorum consists of enough members to do business, the number being fixed by the constitution of the state. It is always provided, however, that a smaller number may meet and adjourn.

336. **The Membership.** — Both senators and representatives are elected from districts having as nearly an equal population as may be, the form of the district being determined by the legislature acting as required by the constitution. The number of inhabitants in the state is divided by the number of representatives to form a representative district, and by the number of senators to form a senatorial district. The quotient in each case is called the ratio of representation (261). In some states the districts are rearranged after the taking of each United States census; but in others, not.

A senator is usually chosen for a longer term than is a representative. In the majority of the states he sits for four years; in New Jersey for three; and in Rhode Island for one. Representatives usually hold their offices for one session of the legislature, whether that be for one year or for two. In most cases the senators do not go out of office at the same time, a portion of them being elected at regular intervals. This is not the plan with members of the house.

In some states the age at which a man is eligible to the senate is higher than for a representative; and in Delaware a senator must be a freeholder (129). Members of Congress and United States officials cannot serve in either house, nor as a rule can women; but in Colorado, Utah, and in some other of the Western states they may. In some states clergymen are not allowed to sit; while in every state, either by statute or custom, a residence in the district is required. No member of either the senate or the house can receive any appointment from the governor, or from any other state authority; nor may he be interested

in any contract with the state. Both senators and representatives are chosen by popular vote.

337. **The Senate.** — The origin of the senate is to be found in the governor's council of colonial times. It answered to the House of Lords except in being a representative and not a hereditary body. It was supposed to represent more especially that portion of the community which was possessed of most wealth and consideration. At the close of the Revolution a higher property qualification was required than for members of the lower house. In some states they were chosen by the people, in others by the lower house, and in Maryland by a college of electors.

The plan of dividing the legislature into two branches is a good one: the laws are thus more carefully made. The senate, being the smaller body, can transact its business more deliberately than can the more numerous membership of the house. Where the senators have a longer term of office than do the representatives, the temptation to yield to popular clamor for the sake of gaining votes is not so great, and thus many bad bills are killed. The senate elects a president *pro tempore*, who presides in the absence of the lieutenant governor. As a rule any one may listen to the proceedings; but if the public interests require it, an executive session may be held from which all but the members and officers are excluded. The senate also acts as a court in the case of the trial of a state officer by impeachment (323). The senate is the judge of the election and qualifications of its own members, and may admit, reject, or expel a member if it sees fit.

338. **The House of Representatives.** — The presiding officer of the house, who is chosen by the members from

among their number, is called the speaker. This position is an honorable one, and although ordinarily the speaker receives no more for his services than does any other member, yet it is much sought after. Because of his right to appoint the committees, and to recognize any one he chooses to address the house, the speaker can do much toward shaping the character of the legislation. Like the senate, the house selects its own subordinate officers, among which is a speaker *pro tempore*, judges of the qualifications and election of its own members, and has charge of the prosecution before the senate in all impeachment cases. Senators and representatives cannot be arrested on a civil warrant (179) during the session of the legislature; but they are subject to arrest on a criminal complaint. Members of neither house can be held accountable for anything said in debate.

339. **Session.** — In most of the states the length of the session is restricted to a certain number of days, the lowest being forty in Colorado and Nebraska, and the highest, one hundred and fifty days in Pennsylvania; but in this state the members receive pay for only one hundred days. In other states the limit is fixed at forty-five, fifty sixty, seventy, and ninety days, the tendency in the newer states being in favor of short sessions. In several states there is no limit fixed by the constitution, but even here the length of the session is practically determined by custom and public sentiment. In all the states both senators and representatives are paid for their services, the amount varying from $1 per day and eight cents per mile in Rhode Island to $1500 per year and ten cents per mile in New York.

340. **Committees.** — A large part of the business in

both the senate and house is done by committees. When a bill is introduced it is usually referred to some committee, where it is supposed to receive careful consideration. After a time the bill is reported to the main body with or without recommendation. If the committee recommends that the bill "do pass," the chances are that it will pass; but even if the report be unfavorable, provided a strong minority is in favor of it, there is still some hope. A populous and wealthy state has need of a large number of committees; but the most important are those on "state affairs," "ways and means," and "judiciary." It is considered a high honor to be given the chairmanship of one of these committees. In order to become acquainted with their needs, and with the manner of conducting them, the committees on state institutions visit them one or more times during each session, and sometimes the whole legislature visits the more important ones in a body. When the expense of such a visit is not met by the individual member, it is called a junket.

341. **From a Bill to a Law.** — A bill is the form or draft of a law presented to a legislative body for its consideration. The course which a bill must take after its introduction by some member is somewhat as follows: The bill is first read by its title. This means that the clerk of the house or senate will announce the title of the bill, after which the presiding officer will say "First reading of the bill." The clerk will then announce the title of the bill a second time, and the presiding officer will say "Second reading of the bill," and then immediately refer it to some committee. After the committee has considered the bill, and has reported favorably, it will be placed upon

the calendar. If the report be unfavorable, it may still be placed upon the calendar by a majority vote of the house. The bill will now be printed so that each member may have an opportunity to read it; but nothing further will be done until it is reached in its regular order. If, however, the measure be a very important one, it may be taken out of its regular order and given immediate consideration.

At the time designated, the bill is discussed in the "committee of the whole," *i.e.* in the presence of the whole house or of a quorum. Any member may now support or oppose the measure, or he may offer amendments. This ordeal is a very necessary one, for otherwise some very objectionable laws might be enacted, or some very serious defects escape detection. The bill, if it originated in the house, would now go to the senate, where it would pass through the same course, and *vice versa*. It would now have to run the gauntlet of the governor's veto. After all this criticism it is not very often that a very bad bill becomes a law; but this sometimes happens, and then a subsequent legislature must repeal it, unless the Supreme Court should declare it to be unconstitutional. Unless the law be given immediate effect by both the senate and the house, it does not go into actual force until a certain number of days after the legislature has adjourned.

342. Public Acts. — If you were to write to the secretary of one of our more populous states for a copy of all the acts passed at any one session of the legislature, he would probably send them to you in two volumes, one labelled "Public Acts," and the other, "Local Acts." If

now you were to examine the former volume, you would find that the laws contained are of two classes: (1) those which deal with the relations between the individual members of organized society; and (2) with those which exist between organized society and its individual members (160). Of the former class are the laws affecting contracts, mechanic's liens, transfers of property, or the employment of persons in stores and factories. Not many changes in laws of this kind occur during any one session. To the second class belong laws relating to taxation, the speed of trains, the proceedings of courts, the incorporation of insurance companies, and to the formation and government of the militia. The majority of the public acts belong to the second class.

343. **Local Acts.** — Local acts are such as refer to a single locality, or to a particular individual or corporation. The power of a state legislature to pass local acts is unlimited, unless restricted by the provisions of the state constitution. In the constitutions of the newer states this power is greatly restricted, Montana confining it to thirty enumerated subjects. Local acts have for their purpose to detach territory from one township and attach it to another; to incorporate a particular village, city, or school district; or to pay a claim against the state which could not be collected at law. All public acts are carefully scrutinized by the legislature, generally also by the newspapers, and all the members take an interest in them. But the local bills are considered to be under the charge of the member from the particular district affected, and unless special efforts are made by the residents of that locality, he can usually have them passed or not as he sees

fit. In many instances the privileges conferred by these special bills are very valuable, and it is in connection with them that most charges of corruption are made.

344. **The Lobby.** — In order to secure or to prevent the passage of local acts, and sometimes of public acts, great influence is often brought to bear upon the legislature. The term "lobby," sometimes also called the "third house," is applied to persons, not being members of the legislature, who seek to influence the members, and thus secure the passage of laws. The term may be used in a good sense or in a bad. It is not only right but praiseworthy for those who are interested in a particular bill to give the benefit of all their knowledge concerning the circumstances to the legislators who must vote upon it; but, on the other hand, to seek to influence them by the use of money, or in any other way than by fair arguments, is a crime.

345. **Constitutional Limitations.** — A state legislature has the power to pass any kind of a law for the regulation and control of the person or property of the subjects of that state, except in so far as that power is limited by the constitution of that state (312) or by the Constitution of the United States. The Constitution of the United States expressly denies to the states the right, among other things, to coin money; to make anything but gold and silver coin a tender in payment of debts; to pass an *ex post facto* law, or a law impairing the obligation of contracts, or to grant any title of nobility. No state can, without the consent of Congress, keep troops or ships of war in times of peace, but this does not refer to the militia. No state can, without the consent of Congress, enter into any

agreement with another state or with a foreign power; or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. There are certain other subjects upon which both a legislature and Congress may pass laws; but when the latter has exercised the right, any conflicting law passed by the former is void. An example of the last class is the bankruptcy law, or those relating to naturalization. (Const. U.S. Art. I, § 8, 9, 10.)

TOPICAL ANALYSIS

1. The division of the legislature into two houses; the number of members.
2. Senatorial and representative districts; length of terms; qualifications for membership.
3. The senate; advantages of having two houses.
4. The house of representatives; the speaker.
5. Limiting the length of the sessions.
6. The committees; the junket.
7. How a bill becomes a law; the committee of the whole.
8. Two kinds of public acts.
9. Local acts; dangers which arise from them.
10. The lobby; right and wrong use of influence.
11. Powers of state legislatures limited in two directions.

QUESTIONS AND EXERCISES

1. Should the speaker of the house be elected by popular vote?

2. Bills are sometimes said to be passed by "log-rolling." What does this mean?

3. What advantage does the bankrupt law hold out to the man who is unable to pay his debts?

4. From what source does a state legislature derive its power to elect a United States senator?

5. Give an example of an *ex post facto* law.

6. What advantage can you think of in reading a bill twice by its title?

7. Organize the class into a committee of the whole and discuss the following question: —

"Resolved that the state should print its school text-books."

8. Is the present tendency toward short sessions of the legislature a good one?

9. Organize your school into a senate; frame and grant a charter to a literary society.

10. Who is the representative in the state legislature from this district? Who is the senator?

XXXI

THE JUDICIAL DEPARTMENT

346. Purpose of the Courts. — One of the three departments into which every state government is divided is the judicial. When the legislature passes a law, difficulties are likely to arise in carrying out its provisions; for some of its requirements may not be clearly expressed, or they may be forbidden by the constitution. Nevertheless it is the duty of the administrative officers to attempt to execute the law in accordance with what shall appear to them to be a fair and reasonable interpretation of its meaning. If any officer is in doubt as to the course he should pursue he may seek the advice of the duly constituted legal authority; and when he has taken the proper precautions he will be protected if he makes a mistake. If, however, the one whose property has been seized, or who has been arrested, thinks the action of the officer unauthorized, he may appeal to the courts to have his property restored, or himself released. The judicial department was established for the express purpose of interpreting the laws (21), and to apply them to particular cases as they arise.

347. The Judicial System. — An examination of the system of courts as found in any one of our states will show a careful classification, and a regular gradation from the lowest to the highest. These courts are so classified

that, as the scope of the jurisdiction increases step by step, the number of the courts in each class decreases, and each class is made subordinate to the next higher. This subordination is to secure the right of appeal, whereby a party to an action, if he thinks an injustice has been done him, may have his case retried in a higher court. This is very important, for it will not be permitted that any man shall lose life, liberty, or property by reason of the unsupported decision of any one court. However, in appealing a case, certain conditions are prescribed, the result of which is that the number of cases actually tried decreases rapidly from one class of courts to another, until in the highest courts they are comparatively few. One of the most important of these deterrent conditions is the payment of costs. The party who appeals in a civil case, called the appellant, must not only pay the costs incurred in the court below, but he must give a bond as security for costs in the court above. Just as the township business is transacted by the township officers, so it is intended that the trifling disputes which arise between neighbors and the petty offences against the public shall be settled by local magistrates.

348. **The Subordinate Courts.** — The number of classes of courts in the different states will vary; but there will always be three, and generally a greater number. The following is a classification in the order of their rank: —

1. *The Justice's Court.* — In every state the court lowest in rank is that of the justice of the peace. Each state has hundreds of these courts, and some states thousands of them. The object is to make them so plentiful as to bring justice home to every man's door. In this court the civil

jurisdiction is confined to cases where the debt or damage does not exceed $300, and in criminal cases to misdemeanors. As to the higher crimes, the justice is simply a committing magistrate. It is not ordinarily considered necessary that a justice of the peace should be a lawyer. An appeal lies from this court to the circuit or district court (185).

2. *Probate Courts.* — Next in number and in rank come the probate courts, for every county has one. In Connecticut the state is divided into a large number of probate districts, some of which include only a single town. They do not always bear the name "probate"; but to some county court is intrusted the care of the estates of deceased persons, and of minors left without parents, of the incompetent, and of the insane. Sometimes the probate judge is given civil and criminal jurisdiction to a limited extent; in the newer states and territories he is often the county superintendent of schools; and occasionally other duties are imposed upon him. Appeals lie to the circuit or district court. Lawyers are usually selected for this office, but not always.

3. *County Courts.* — In those states where the county is the unit (245), it is common to find a county court with a somewhat wider jurisdiction than that of the justice's court, but inferior to that confided to the circuit or district courts. In Florida there is a distinction between the county court and the county judge's court, the writs or commands (179, 181) of the former being good in all parts of the state, while those of the latter are confined to the county. An appeal lies to the circuit. These courts have in Florida jurisdiction of probate matters.

4. *Municipal Courts.* — In all the larger cities, and sometimes in the smaller ones, a separate court (240) is maintained for the trial of offences arising within the city, whether for a violation of the criminal laws of the state or of the city ordinances (237). In some states there is also a municipal court invested with powers for the trial of civil cases similar in extent to those granted to the circuit or district courts, and from which an appeal lies directly to the supreme court.

5. *Circuit Courts.* — Just as in New England the county consists of a number of townships united for judicial purposes (244), so in the less populous states several counties are united for judicial purposes. As sessions of court are held at each county seat by a judge who is obliged to make the circuit of his district at least twice each year, he bears the title of circuit or district judge. Small cases cannot be commenced in these courts; but sometimes they may be brought there by appeal. Jurisdiction in civil cases extends to the highest amounts, and in criminal cases it includes the highest crimes. As the population and volume of business increases new courts are formed, until, by successive reductions, the circuit may consist of but one county. In the larger cities several judges are associated to transact the business of this court. Appeals lie directly to the Supreme Court.

349. **The Supreme Court.** — In every state in the Union there is a court of last resort from whose decision there is no appeal, unless it involves a point of federal law. In nearly every state this is called the "Supreme Court"; but in New York it is styled the "Court of Appeals," the Supreme Court occupying an intermediate place between

the circuit and the court of last resort. In New Jersey it is called the "Court of Errors and Appeals," and in Kentucky the "Superior Court." Louisiana has a Court of Appeals below the Supreme Court; Texas has two supreme courts, one for civil and one for criminal business.

The province of the highest court is to decide questions of law, questions of fact being left to the petit jury (285), and hence its jurisdiction is chiefly appellate. All the proceedings in the court below are printed, including at least a part of the testimony. If the case be of sufficient importance, the attorneys have the right to make oral arguments; but if the amount involved be small, the case must be submitted on briefs. These "briefs" are short statements of such facts as the attorney thinks important, with references to decisions bearing upon the disputed points.

The Supreme Court has original jurisdiction to issue writs of *mandamus* (289), *quo warranto*, *habeas corpus* (220), and prohibition for the purpose of enforcing its appellate powers. By means of the *quo warranto* the court can determine the right by which a person holds an office; the *habeas corpus* will deliver a person from custody; the *mandamus* will compel obedience to the orders of the court; and the writ of prohibition will prevent a threatened injury.

350. **Supervisory Powers.** — The Supreme Court not only makes all the rules in accordance with which all business before it must be transacted, but it also regulates the method of procedure in all the lower courts. It exercises direct control in each particular case by the decision which it renders, and in a general way by passing rules for the guidance of the court below, and which they must obey. In an indirect manner every decision rendered by the Su-

preme Court is a rule which every lower court must follow under like circumstances. For convenience of reference these decisions are printed, issued from time to time in book form, and a set of these books forms an indispensable part of the library of every judge and of every practising attorney in the state.

351. **The Supreme Judges.** — A supreme judge must necessarily be a lawyer, and it is very rare that one who has not had a wide experience, and has not attained a high standing in his profession, is even nominated for the position. In the various states the number of judges constituting the Supreme Court ranges from three to nine, and the term of office is from two years in Vermont to life in Massachusetts. In Pennsylvania the term is for twenty-one years, and in New Hampshire it is until the judge reaches the age of seventy. In the majority of the states the judges are elected by the people; in several they are appointed by the governor and senate or council; and in six they are elected by the legislature. The salary ranges from $2000 to $8500, and no judge is allowed to practise his profession or to receive a fee. The position of supreme judge is one of great dignity and honor, and even the very best lawyers will take it, although at a sacrifice from a money standpoint.

352. **Supreme Court Officers.** — The administrative officers of this court are the reporter, the court crier, and the clerk. Next to the judge the most important officer is the reporter. It is his duty to superintend the publication of the decisions of the court, which he often annotates, *i.e.* by means of notes upon the margin he refers to former decisions by the court in which the same principles have

been considered. The duties of the clerk of this court correspond with those of the clerk of the circuit courts (293). It is the duty of the court crier to preserve order in the court room. He also announces the entrance of the judges, and when he raps upon his desk, every person in the court room rises as a mark of respect, and remains standing until the judges are seated.

353. **Courts of Other States.** — The Constitution of the United States provides that "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." (Const. U.S., Art. IV, § 1.) This does not mean that the laws enacted by one state legislature, or the public records kept by the administrative officers, or the decisions of its courts, necessarily have any force or effect in another state; for every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory. It does mean, however, that when the courts of a sister state shall have jurisdiction, and shall have exercised it, then the orders of the court will be enforced in the other states of the Union in accordance with the laws of the state to which the court issuing them belongs. Thus, if a citizen of Florida should make a will disposing of personal property situated in Michigan, and die, the will must first be probated in Florida, and then the Michigan courts will distribute the property according to the Florida laws. But if the testator was a resident of Michigan at the time of his death, the Florida court would have no jurisdiction over that particular property, and it would be distributed according to the Michigan law. For the records kept by a public officer in one state to be received in evidence in the courts of another state they

must be properly proven. The decisions of the Supreme Court of one state have no binding force whatever outside the boundaries of that state; but they are carefully read by the judge of any state court for the suggestions they may contain.

TOPICAL ANALYSIS

1. Purpose of the courts; guide to administrative officers.
2. The judicial system of the state; classification of courts.
3. Courts subordinate to the Supreme Court: —
   (1) The justice's court. (2) Probate courts.
   (3) County courts. (4) Municipal courts.
   (5) Circuit or district courts.
4. The Supreme Court — appellate and original jurisdiction.
5. Supervisory powers of the Supreme Court.
6. The judges of the Supreme Court, — qualifications, salary, term of office, election, or appointment.
7. The ministerial officers of the Supreme Court.
8. Interstate relations as to their courts.

QUESTIONS AND EXERCISES

1. If in doubt, what legal authority should an officer consult before making an arrest?
2. Is it better to have the judges appointed by the governor and senate, or elected by the people?
3. What is meant by "court law"?
4. What is "comity"?
5. How many judges constitute the Supreme Court in this state?
6. Mention all the different courts in your county.
7. If you should wish to bring suit in the circuit court in this state, how large must the amount be?
8. If a man should insist upon holding an office after his term had expired, how could he be dispossessed?
9. What is the meaning of the word "domicil"?
10. What does the expression "Reynolds *vs.* Adams, 90 Ill. 149" mean?

Part V

The National Government

CHAPTER XXXII. **The Founding of the Nation**

CHAPTER XXXIII. **The National Executive**

CHAPTER XXXIV. **Aids to the National Executive**

CHAPTER XXXV. **Domestic and Foreign Relations**

CHAPTER XXXVI. **The National Legislature**

CHAPTER XXXVII. **The National Judiciary**

XXXII

THE FOUNDING OF THE NATION

"Thou, too, sail on, O Ship of State!
Sail on, O Union, strong and great!
Humanity with all its fears,
With all its hopes of future years,
Is hanging breathless on thy fate!"

— LONGFELLOW.

354. **From Colony to State.** — When the Revolutionary War broke out the colonists had no thought of changing their dependent governments into independent states. Even after the battles of Concord and Lexington they desired nothing so much as to become friends with the king. But the king, by calling them rebels, by forbidding foreign nations to trade with them (298), and by employing the Hessians to subdue them, had rendered reconciliation impossible. By the spring of 1776 all the governors of the thirteen colonies had either fled or been thrown into prison. This put an end to colonial government, and Congress, seeing that efforts to obtain their rights by peaceful means were in vain, on May 15, 1776, resolved that it was "necessary to suppress every kind of authority under the crown," asked the colonies to form governments of their own, and thus to become states.

This advice they followed, elected officers, adopted constitutions, and thus threw off all their allegiance to Great Britain. They did not, indeed, become sovereign states, because they neither exercised nor claimed the right to treat with foreign nations, nor to carry on war (307); but as to everything that pertains to the management of their local affairs, they then became, and have ever since remained, free and independent.

355. **Colonial Unions.** — The weakness of each individual colony, and the distance of the whole of them from the mother country, made it very desirable that they should unite for mutual assistance. There was one union of four colonies, one attempted union, and then all united. These colonial unions and attempted unions were as follows: —

1. *The New England Confederation.* — In 1643 Plymouth, Massachusetts Bay, Connecticut, and New Haven united for defence against the Indians, and to assist masters to recover runaway apprentices and slaves. It lasted about forty years.

2. *The Albany Plan of Union.* — In 1754 a convention, to which seven of the colonies sent delegates, met at Albany, New York, to make a treaty with the Indians. To this convention Franklin submitted a plan for a union of all the colonies under the government of a president to be appointed and supported by the king, the legislative body to consist of a council to be chosen by the colonial assemblies. This plan was rejected by the colonies on the ground that it gave too much power to the king; and by the king because it gave too much power to the people.

3. *The Continental Union.* — The twenty years following 1754 were filled in America with great events of a

military and political nature, and from which the colonists became convinced of three things: —

(1) That American troops, when led by a competent American general, could win victories even over regulars. Moreover, the French and Indian wars had revealed the general.

(2) That the king was determined to destroy in America the right of local self-government, which the colonists had always enjoyed. The course pursued by the king aroused a spirit of hostility which extended to every colony, and which demanded that such defensive measures should be taken as would render their liberties absolutely secure.

(3) That success in their undertaking could be won only by united action. In the language of South Carolina, "The whole country must be animated with one great soul, and all Americans must stand by one another, even unto death." Fortunately there were at hand some great political leaders, whose constructive statesmanship could devise a form of government able to preserve those liberties after they had been won (*227*).

356. **The Continental Congress (1774–1781).** — The first American or Continental Congress met in Philadelphia, September 5, 1774, and remained in session about fifty days. It might more properly be called a convention than a congress; for it did not attempt to exercise any of the powers of government, but contented itself with issuing a declaration of rights, and with making some very important recommendations to the colonial assemblies. The second Continental Congress met at Philadelphia, May 10, 1775, and did not finally adjourn until October, 1788, leav-

ing the states without a central government until April, 1789, when the government under the constitution was actually put into operation.

From the date of its organization until 1781, when the last of the colonies adopted the Articles of Confederation, the Congress had no written constitution; but nevertheless it exercised, with the consent and active support of the governed, the most important functions of a national government. It declared the colonies free and independent states; conducted a great war; assumed the whole direction of foreign affairs; twice voted to Washington powers which made him a virtual dictator; created a national currency; established a general post-office, and gave to each commonwealth an equal voice in deciding any question that should come up for congressional action. These are sovereign powers (307), and the body of men which exercised them represented not the states, but the whole American nation.

357. **The Confederation.** — Until March 1, 1781, when Maryland ratified the Articles of Confederation, being the last colony to do so, the Continental Congress had been a revolutionary body, exercising such powers as the necessity of the case required. In the absence of any written constitution (356), Congress was the sole judge of the extent of its powers, and there was danger, if its resources should permit, that it might seek to legislate upon those subjects heretofore impliedly reserved for state control. To guard against this danger, and to secure the continuance of a national government after independence should have been won, Franklin, as early as June 12, 1775, submitted a plan for a perpetual union, and this idea finally

found expression in the Articles of Confederation, which were ratified by all the colonies.

In this instrument the states expressly delegated to the national government certain powers which they agreed not to attempt to exercise; reserved to themselves every power not thus delegated; adopted certain regulations "to secure and perpetuate mutual friendship and intercourse between the people of the different states"; and made such provisions for the support and administration of the government as was thought necessary. The plan was a bad one, for it gave to Congress no coercive power. There was no separation into legislative, executive, and judicial departments, but all these duties were conferred upon one House; Congress could appropriate money to meet the national obligations, but could not raise a dollar, as this power was reserved to the states; it could not compel England to keep the treaty of peace, or, what was worse, keep the peace itself. In short, Congress could "declare everything, but do nothing."

358. Separating Influences. — So long as the states were held together by a common peril, the national government received a more or less adequate support; but when this pressure was removed, its real weakness stood revealed. Attachment for the state was stronger than love for the union; and the obedience which love of country did not secure could not be enforced under the Articles of Confederation. Jealousies sprang up within the states. Massachusetts excluded all goods imported in British ships; Connecticut not only admitted such goods, but imposed a duty upon imports from Massachusetts; New York levied a duty upon firewood from Connecticut and garden prod-

uce from New Jersey: the former responded by suspending all commercial dealings with New York, the latter by charging ground rent for a lighthouse which New York had erected on New Jersey soil. Gross outrages were perpetrated by Pennsylvania officials upon settlers from Connecticut in the Wyoming valley; and New York would have waged war against New Hampshire over boundary disputes had Washington not intervened as peacemaker. Besides these and other separating influences, there was the ever present slavery question, warmly defended by the South and execrated by the North.

359. **Unifying Influences.** — It was quite evident that the country was drifting toward anarchy. At home, Massachusetts was obliged to put down by force the armed rebellion of Shay, and other states were racked with internal dissensions. Abroad, we were "bullied by England, insulted by France and Spain, and looked askance at in Holland." Even the Barbary pirates paid us no respect, but plundered our commerce with impunity, and sold our citizens into slavery. At length the people became convinced that a stronger central government must be formed, or the union would fall in pieces. The passage by Congress of the Ordinance of 1787 — a plain usurpation of power — greatly assisted, for it was considered better that there should be a strong government with specific powers than that a weak one should perform illegal acts to save itself from destruction. It was seen also that a national currency and a uniform commercial system, both domestic and foreign, were absolute necessities. A closer union of the states was rendered more easy of accomplishment because a majority of the people had a common ancestry,

spoke the same language, cherished the same traditions, and rendered obedience to the same system of common law (24).

360. The Constitutional Convention. — When the feeling had become general that a desperate crisis had been reached, Congress recommended all the states to meet at Philadelphia "to devise such provisions as to them shall seem necessary to render the constitution of the federal government adequate to the exigencies of the union." This convention, consisting of fifty-five delegates, met in Philadelphia in May, 1787, and remained in session nearly four months. Thirty-nine out of the fifty-five delegates signed the draft, which was submitted to conventions called in each state especially for that purpose. Thus indirectly, but acting through their chosen delegates, the people themselves, the state, adopted a constitution and frame of government which Mr. Gladstone once said "is the most wonderful work ever struck off by the brain and purpose of man."

361. Constitution a Compromise. — Convinced as were the delegates of the necessity for a stronger government, there was yet a decided difference of opinion (1) as to the powers to be conferred, (2) the method of representation of the states, (3) the taxing of exports, and (4) the importation of slaves. The constitution finally adopted was a compromise between those holding different views upon these questions, and is said to be "the most successful instance in history of what a judicious spirit of compromise may effect." The convention was divided into two parties, called the National party and the State party. The former of these wished to form a national govern-

ment springing from the people; the latter was determined to preserve the state system, and was afraid that the large states would combine to swallow the small ones. "The small states did not care so much about the powers of the national government, or even its framework, as they did about the absorption of these powers by the large states. Hence the contention was not so much about powers as about the hands the powers would fall into."

362. **Nature of Compromise.** — The harmonizing of the differences of opinion which arose in the convention upon three of the great questions before it (363) was effected in each case by a compromise.

1. *The National Legislature.* — For the formation of the legislative department three plans were offered, two of which were original.

(1) The Virginia plan provided for two houses, each state to have a number of representatives proportionate either to its wealth or to the number of its free inhabitants. The states were to have no representation as such.

(2) By the New Jersey plan there was to be a single house, to represent states and not individuals, and the states were to vote equally without regard to wealth or population.

(3) By the Connecticut compromise the national principle was to prevail in the house, and the federal in the senate.

2. *Slave and Free.* — As the congressmen were to be apportioned to the states according to their population, the slave-holding states wished to have all the slaves counted; the free states desired to have them all omitted. By the compromise two-thirds were counted.

3. *Exports and Imports of Slaves.* — The free commercial states were opposed to any tax upon exports and to the importation of slaves; the planting states wished to tax exports and to import slaves without restriction. The Constitution provided that Congress should not forbid the importation of slaves before 1808, and that exports should never be taxed.

363. **Interpretation of Constitution.** — Every expression in the Constitution having been carefully considered both by the makers and by the conventions in the several states, it follows that whenever any dispute arises as to the right of the government to perform any particular act, the authority must be found in the Constitution. In other words, the United States government has no common law power (312). Whenever express authority is shown to perform a particular act, then the right is certain; but the authority may exist by implication, and hence the powers of the national government are express and implied. "Take, for example," says Chief Justice Marshall, "the power to establish post-offices and post-roads. This power is executed by the single act of making the establishment. But from this has been inferred the power and duty of carrying the mail along the post-road from one post-office to another. And from this implied power has been again inferred the right to punish those who steal letters from the post-office or rob the mail." In doubtful cases the true meaning of any expression in the Constitution must finally be determined by the Supreme Court of the United States.

364. **Amending the Constitution.** — The makers of the Constitution did not imagine they had constructed an

instrument that would never need amending, and so they provided a way. By a two-thirds vote of both houses, Congress may frame an amendment and submit it to the states for their ratification (315); and if two-thirds of the state legislatures demand it, Congress must frame and submit one upon any subject desired (314). In either case three-fourths of all the states, acting either through their legislatures, or through conventions called specially in each state for that purpose, must ratify the amendment before it can become a part of the Constitution. In all, fifteen amendments have been made, the first ten of which are called the "Bill of Rights" (221, 300).

365. Checks and balances. — The framework of our government is so constructed that one part acts as a check or a balance upon some other part. One officer is given a duty to perform; and then another officer is appointed to superintend the first one, and to do something besides. The fundamental divisions are into legislative, executive, and judicial. If the legislature passes a bad bill, the executive may veto it; if the executive refuses his consent, the legislature may pass the bill over the veto by a two-thirds vote. If the legislative power should enact a law which the Constitution forbids, the judicial department would declare it invalid; if the people should be dissatisfied with the decision of the court, they may amend the Constitution. If the governor or any of the supreme judges should violate their trusts, the legislature may remove them by impeachment; if a legislator becomes corrupt, the branch to which he belongs may expel him, and the courts can send him to prison. These statements apply equally to state and national governments, and so nicely is

the machinery adjusted that there is little serious danger from any one source, the power being at hand to correct it.

366. **Federalism.** — The political history of our country immediately preceding and for many years following the adoption of the Constitution is filled with discussion as to the nature and extent of the implied powers (363). Some of our statesmen, among whom were Hamilton, were disposed to interpret the provisions of the Constitution very liberally, and were called "loose-constructionists" (28 : 2) or "federalists"; others, among whom were Jefferson, took an opposite view, and were called "strict-constructionists" or "anti-federalists." The former looked upon the nation as a state-union; the latter, as a union of states. Under the Articles of Confederation (359) our government was a "league of states"; now it is universally held to be a "state-union," with whose management the states as individuals have little control. History shows us that confederacies have seldom been successful, the only conspicuous example to the contrary in existence being Switzerland. The old German Empire, also called the Holy Roman Empire, was a confederation and a great failure; the modern German Empire is a federation, and very powerful.

TOPICAL ANALYSIS

1. From colony to state; how far sovereign.

2. The New England Confederation; the Albany plan; the continental Union.

3. First Continental Congress; second Continental Congress; powers exercised by each.

4. The Confederation, its weakness and strength.

5. Separating influences.
6. Unifying influences.
7. The constitutional convention.
8. The Constitution a compromise.
9. The nature of the compromise: —
   (1) The national legislature.
   (2) Slave and free.
   (3) Exports, and imports of slaves.
10. Interpretation of the Constitution; express and implied powers.
11. Amending the Constitution.
12. Checks and balances.
13. Federations; confederacies.

QUESTIONS AND EXERCISES

1. Read the Constitution carefully and see how long it takes you.
2. How many words are used to establish the postal system?
3. What six objects are set forth in the preamble to the Constitution?
4. Trace out the checks and balances in receiving and paying out the money received from taxation by the state officers.
5. Does a man who has no taxable property, but has a family, pay any taxes?
6. Are national banks directly authorized in the Constitution?
7. How may two or more states be consolidated?
8. In what way may the states exercise control over the national government?
9. Give a short sketch of the life of Gladstone.
10. Make a list of five American statesmen who were loose-constructionists, and of five who were strict-constructionists.

XXXIII

THE NATIONAL EXECUTIVE

367. State and Nation. — It will greatly aid us in the further study of our subject if we bear in mind the following statements: —

1. All the citizens of the United States, no matter where they reside, taken together, constitute one nation which, as to those powers conferred by the Constitution, is sovereign and absolute.

2. This national government exercises its powers directly upon the people through its own officers; it enacts its laws, convicts and punishes its criminals, and collects and disburses its revenues without any reference to state boundaries.

3. The only elective officers of the United States government are the President, the Vice-President, the senators, and the representatives, all the rest being appointive. In choosing its representatives the nation makes use directly of the election machinery of the states, and as to the rest of the elective officers it does so indirectly.

4. No state officer as such has anything to do with executing any law of the United States, nor does any United States officer have any power to execute a state law.

368. The Three Departments. — The contests which each of the colonies had at times waged with their governors to prevent encroachments upon the power of the

legislature, and the importance of having the laws interpreted by judges independent both of the governor and the legislature, led the framers of the Constitution to mark out carefully the limits within which each of the three departments of the government was to exercise its authority. At the same time it was evident that each department could not be absolutely independent of the others, but that the three must work together. Hence was developed that system of checks and balances (365) which has contributed in no small degree to the successful working of our governmental machinery.

369. **The President.** — The executive department of the United States government consists of the President, who holds his office for four years. The presiding officer of the Continental Congress was called the President, and from this source came the title of the chief executive of the nation. His duties are civil, military, legislative, and judicial (320).

1. *Civil Executive.* — The President is charged with the responsibility of seeing that the laws are properly enforced, and that the business of the nation is carefully conducted. He accomplishes this through subordinate officers, who in their turn are aided by a very great number of assistants, clerks and workmen not being counted as officers (271). All these taken together constitute the public service, which is divided into civil and military. By the "civil service" is meant those officers and their subordinates who are concerned in carrying on the domestic and foreign affairs of the government. Here are also found the officers of the courts, such as marshals and clerks. The administration includes the President and

members of the Cabinet (377), whose duty it is to advise together in the management of the executive department.

2. *Military Duties.* — All the land and naval forces of the United States, and the militia of the several states when called into actual service (333), are under the control of the President; but he is expected to exercise this control through the departments of War and of the Navy. In times of peace his duties as commander-in-chief are not very burdensome, for even the appointment of the major generals is made according to a system of promotion based very largely upon length of service. In time of war, however, this responsibility is greatly increased. It is said that during the Civil War, President Lincoln wielded more authority than any single Englishman had done since the days of Oliver Cromwell.

3. *As Legislator.* — At the opening of every session of Congress, the President submits a message in which he makes suggestions for legislative action. Each of these is referred to the proper committee, where it receives careful consideration. At any time during the session he may also send in a special message, or Congress may require information upon any subject which he will give, provided the public interests do not demand secrecy. Neither the President nor any member of the Cabinet may introduce a bill, nor vote upon it, nor even speak upon any question before either house. Like a governor (320 : 3), the President may veto a measure, but it may be passed over the veto by a two-thirds vote. The treaty-making power is a legislative one, but the Senate, or in certain cases the House, may act as a check. Here also must be classed the power to suspend the writ of *habeas corpus* (220), if

Congress be not in session, "when in cases of rebellion or invasion, or when the public safety may require it." (Const. Art. I, Sect. IX, 2.) During the Civil War thousands were thrown into prison by the orders of the President and held so long as it was thought necessary, without any trial.

4. *Judicial Duties.* — The President has the same power to pardon or commute the sentences of prisoners convicted under United States laws as has a governor in cases of those convicted under state laws. An appeal will lie to him from the decision of a court-martial in case of a military prisoner.

5. *Foreign Representative.* — The President is the sole representative of the nation abroad, no foreign court recognizing any other officer. Governors of states have no power in this direction whatever. He receives ambassadors from foreign nations, and, with the advice and consent of the Senate, appoints ambassadors, other public ministers, and consuls. All treaties are negotiated under his direction, but they must receive the approval of the Senate. The House of Representatives may also defeat a treaty, if money is to be appropriated to carry out its provisions.

370. **Qualifications of President.** — No person except a natural-born citizen can aspire to the office of President; nor can any one be elected to that office who has not attained the age of thirty-five years, and been fourteen years a resident within the United States. Before assuming the office he must take an oath to perform faithfully its duties, and to "preserve, protect, and defend the Constitution of the United States." The President may resign, or he may be impeached by a process similar to that pursued in the

states (323). His salary is $50,000 per annum, which cannot be increased or diminished during his term of office.

371. **Choice of President.** — The President is elected by all the voters in the United States, but not directly (367). The framers of our Constitution did not think the choice of so powerful an officer as the President should be submitted to popular vote on account of the excitement it would arouse; they did not wish to leave it to Congress, because it would make the executive too dependent on the legislature. They therefore adopted a device similar to that used in Maryland in the selection of state senators (337). There is nothing in the Constitution to prevent a reëlection any number of times; but the example of Washington in declining a third term has made it practically impossible for the time to be extended beyond eight years.

372. **The Electoral College.** — The Constitution directs each state to choose electors equal in number to its senators and representatives in Congress, the method of choice being left to each state legislature. Upon a day appointed by Congress, now the second Monday in January, the electors meet in their respective state capitals, and vote separately by written ballot for President and Vice-President. Three lists of the votes are made out, one being transmitted to the Secretary of the Senate at Washington by mail, one sent to him by special messenger, and one kept on file in the office of the Secretary of State at the state capitol. On the second Wednesday in February the two houses meet in joint session, and in the presence of both houses the president of the Senate opens the certificates and counts the votes. The person having the largest number of votes is declared elected President.

373. **Choice by Congress.** — In case a majority of the electors do not vote in favor of any one person for President, the choice falls to the House of Representatives, but is restricted to the three who have received the highest number of electoral votes. The vote is taken by states, the representatives from each state having one vote, and a majority of all the states being necessary. A quorum for this purpose consists of one or more members from two-thirds of the states. Each state may fill any vacancy that may arise in the number of its electors.

374. **The Vice-President.** — If for any reason the President is unable to perform the duties of his office, they devolve upon the Vice-President. In case neither can perform them, Congress has provided that the succession shall be as follows, and in the following order: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, Postmaster General, Secretary of the Navy, and the Secretary of the Interior.

The Vice-President is voted for at the same time and by the same electors as is the President. If the electors fail to make a choice, then the Senate chooses the Vice-President from the two having received the highest number of electoral votes. The senators vote by states, each state having one vote; a quorum consists of two-thirds of the whole number of senators, and a majority of all is necessary to a choice. No person can hold the office of Vice-President if he be disqualified to hold that of President. Just as the lieutenant governor presides over a state senate, so the Vice-President is the presiding officer of the Senate of the United States, but has no vote except in case of a tie. His salary is $8000.

TOPICAL ANALYSIS

1. State and nation: —
    (1) One nation.
    (2) Powers exercised directly.
    (3) Elective and appointive officers.
    (4) Separation of state and national officers.
2. Interdependence of the three departments.
3. The President, as —
    (1) Civil executive;
    (2) Military chieftain;
    (3) A legislator;
    (4) Judicial officer;
    (5) Foreign representative.
4. Qualifications of President.
5. Choice of President.
6. The electoral college.
7. Choice by Congress.
8. The Vice-President.

QUESTIONS AND EXERCISES

1. Why will a presidential elector always vote for his party candidate? Could he do otherwise?

2. To how many electors is your state entitled?

3. To whom would you apply if you wished to become postmaster?

4. Under what circumstances may the President adjourn Congress without the consent of either house?

5. Why is it difficult to pass a bill over the President's veto?

6. How many Vice-Presidents have become President?

7. Are the elections in the states ever in charge of national officers?

8. Can the President hold any other public office?

9. How long may an officer appointed by the President during a recess of the Senate serve?

10. How many electoral votes are necessary to elect a President?

XXXIV

AIDS TO THE NATIONAL EXECUTIVE

375. The English Cabinet. — The President's Cabinet consists of a body of men selected by him to assist him in the performance of his official duties. It had its origin in the Privy Council of England, and is a committee of from twelve to fifteen members of Parliament into whose hands is given the actual government of the country. The chief member of this committee, chosen by the sovereign, is called the Prime Minister, who selects the remaining members. Each member of the Cabinet, being also a member of Parliament, has a right to be heard in debate, and to advocate or defend in the house to which he belongs such measures as the "government," or, in other words, the Cabinet, may desire to have passed. This committee always belongs to the most numerous party in the House of Commons, which will generally support whatever the Cabinet proposes. If upon any important measure it should fail to do this, the Cabinet would resign at once, and the King or Queen would either appoint a new Prime Minister to select a new Cabinet, or dissolve the Parliament and order a new election. Each of eleven members of the English Cabinet is, by virtue of his office, at the head of an executive department.

376. **Advisers to the Governors.** — There is not now, nor was there ever at any time in any of the states or colonies, a body of men whose sole duty it is to give official advice to the governor. A governor of a colony, like the governor of a territory at present (302), always had a council to advise with him; but as, in nearly all cases, the council took an active part in the work of legislation, it resembled the House of Lords more than the Cabinet. It was a legislative body with limited powers, something like a modern city council; and if any of its members acted as a confidential adviser to the governor, it was not because his official relations required it.

It must not, however, be supposed that any governor attempts to discharge the duties of his office without seeking advice from some one. Upon purely technical questions, or when he simply desires information, he will undoubtedly ask the opinion of the heads of the particular department interested; but upon all other questions he is far more likely to counsel with those of his political or personal associates in whose judgment he has the most confidence. Sometimes it is possible for him to attach these persons to him officially by appointing them to some commissionership (324). These men form the "inner circle," often called the "ring," or the "cabal," which runs the administration (369: 1).

377. **The American Cabinet.** — The Constitution did not provide for any body of men to be the official advisers of the President; but the first work accomplished by Congress was to establish the departments of State, the Treasury, and War. Washington appointed Hamilton Secretary of the Treasury; Knox, Secretary of War;

Jefferson, Secretary of State; and Randolph, Attorney General. The first two were Federalists (366), the last two anti-Federalists, and the four formed the first Cabinet. The number has since been increased to eight by the creation of four new departments.

The President may select any one he chooses to fill a Cabinet position, subject to the approval of the Senate, which thus far has never been refused. He almost invariably appoints men of his own political belief, making his selections as a rule from those who have had large experience in public life; but sometimes chooses his personal or business associates, and often a Cabinet position is the reward for political services or for liberal contributions to the campaign fund (268). The meetings of the Cabinet are always held at the Executive Mansion, but no records are kept of the proceedings, and the President is not obliged to follow the advice given. In England the sovereign is never present at a Cabinet meeting; in this country the President always is. If a Cabinet officer wishes to vacate his office, he simply hands his resignation to the President, who immediately selects his successor. The salary is $8000.

378. **Comparisons.** — If we compare the two systems as here outlined, we shall see that in England the members of the Cabinet belong to either one or the other of the two houses of Parliament, and have all the privileges which are enjoyed by any member. In our country a member of the Cabinet can belong to neither house of Congress, and can never take part in a congressional debate. In the one case a failure on the part of the government to carry its measures results in a resignation of the whole Cabinet,

and there is generally a new election; in the other case, such a failure would cause no change, and no new election. In England the Prime Minister assumes all the responsibility, and thus the sovereign is relieved; here there is no such officer, all the responsibility being placed on the President. Nevertheless the members of our Cabinet exercise great influence in shaping legislation, as it is presumed that their advice has had the approval of the President.

379. **Departmental Business.** — Though desirable, it is not strictly necessary that a Cabinet officer should have previously had any special knowledge of the method of conducting the business in his particular department. No President would think of appointing one who was not a lawyer as Attorney General, but civilians have generally been selected for the War or Navy departments. This has been made possible because all the details have been carried on upon a uniform plan for years, and by subordinates who, by reason of their long experience, have a perfect knowledge of the work. Nearly all of these subordinates are under the civil service rules (390), and can be discharged only for good cause. Each department is subdivided into "Bureaus," and all routine business is immediately referred to one of these, where it is settled. The nature of the transactions by the respective departments is similar to that performed by the corresponding ones in the states, only its scope is more extensive. At the opening of each session of Congress, and whenever called upon, each secretary makes a report to Congress, containing recommendations.

380. **Secretary of State.** — The Secretary of State for the

United States performs the same duties for the national government as does the corresponding officer in each state for his state government, and some in addition. The Constitution forbids any of the states to enter into any treaty, alliance, or confederation with any foreign state, and hence the whole foreign policy of the country is in the hands of the President, who directs it through his Secretary of State. This officer negotiates all treaties, issues the instructions to our foreign ministers, presents ambassadors and ministers from foreign countries to the President, issues passports to any of our citizens who wish to travel abroad, and it is to him that the territorial governors report.

381. **Secretary of the Treasury.** — Subject to the approval of the President, the Secretary of the Treasury has charge of the financial policy of the government. This department attends to the coining of all metallic money, and hence has charge of the mints (120); it also issues certificates that circulate as money, which are printed by the Bureau of Engraving and Printing (121). The officer next in rank to the Secretary is the United States Treasurer, to whose custody are intrusted the funds of the nation. This department keeps a strict account with all the other departments, and their financial dealings are carefully inspected by treasury officers called auditors. The amount of business is so vast, so varied, and withal so important that a great number of subordinates is employed, among whom is a corps of detectives belonging to the "secret service," and whose duty it is to run down counterfeiters, smugglers, and the so-called "moonshiners." The national banks of the country (151) are

under the charge of an officer of the Treasury, known as the Comptroller of the Currency.

382. **Secretary of War.** — Under the President, the Secretary of War has charge of the military affairs of the nation in so far as they relate to the land forces. In time of war his duties are very onerous; but in times of peace the business is largely routine in its character, and is distributed among the ten bureaus into which the department is divided. Besides the maintaining and equipping the army, the Secretary of War has general direction of the expenditure of large sums of money which are annually voted by Congress for the improvement of the rivers and harbors, and for the support of the United States Military Academy. This academy is located at West Point, in the state of New York, the purpose of the school being to educate young men from the different states to become officers in the regular army. The students are called "cadets." Each member of Congress is entitled to appoint one cadet, and the President appoints one from each territory, one from the District of Columbia, and ten at large. None of these are admitted, however, unless they are able to pass a satisfactory examination, which is both physical and intellectual in its nature. The expenses of each cadet is paid by the government; but after graduation each must serve for two years in the regular army.

383. **Secretary of the Navy.** — The Secretary of the Navy sustains the same general relations to the marine forces of the nation as does the Secretary of War to the land forces. As in the case of the War Department, so here the routine business is transacted through several bureaus, the duties of the secretary being much greater

in times of war than when there is peace. The Naval Academy at Annapolis in the state of Maryland is organized upon a plan similar to that of the Military Academy at West Point, the cadets being obliged to serve two years in the navy after their graduation. They are admitted between the ages of fourteen and eighteen, and the length of the course of study is six years. They are called "cadet-midshipmen."

384. **Postmaster General.** — Among the officers in the several state governments there is no one whose duties at all resemble those of the Postmaster General, for the postal system is now, and always has been, under the sole charge of the national government. This is the oldest of the executive departments, having been organized in 1775, with Benjamin Franklin as the first Postmaster General. No department so well illustrates the wonderful growth and development of this country as does this. In 1775 we had only seventy-five post-offices, now there are more than a thousand times as many; then the annual receipts were less than $27,000, now they are more than a million times as much. In 1816 it cost twenty-five cents to send a letter weighing less than an ounce four hundred miles, now you can send one weighing one ounce four thousand miles for two cents, and hundreds of mail-bags filled with parcels of merchandise weighing less than four pounds each are conveyed to all parts of the country at a cost of one cent an ounce. In 1864 the money order system was established. In the cities no resident ever thinks of going to the post-office for his mail, except perhaps on Sunday; but his letters and papers are delivered to him by mail-carriers wearing the livery of the govern-

ment, and the free-delivery system is being rapidly extended to the rural districts. To conduct this immense business requires thousands of employees, all of whom are indirectly under the control of the Postmaster General.

385. **The Attorney General.** — The department of justice is presided over by the Attorney General, whose duties are essentially the same in their nature as are those of the attorney generals in the state governments (328). He is assisted by a Solicitor General, who is the second officer in rank, and there are also other attorneys and solicitors connected with the department. The Attorney General, either personally or by his assistants, performs the following duties: —

1. He conducts all suits to which the United States is a party, either in the Supreme Court or in any other court, when requested by the head of a department.

2. Exercises general supervision over all district attorneys and marshals in the district or other courts of the United States.

3. Gives advice in writing to the President or to the heads of the departments when requested.

4. Examines titles to lands when for any reason the government desires to purchase the same.

5. Performs such other duties for the government as the office requires.

386. **Secretary of the Interior.** — Just as the State Department has to do with the foreign affairs of the nation, so does the Interior Department have in charge the home affairs. The business is distributed among several bureaus, which are presided over by officers called, with one exception, "commissioners."

1. *The Pension Office.* — The Commissioner of Pensions examines and decides upon all claims made by soldiers and sailors for pensions and bounties granted under the laws of Congress. In the year 1901 there were 997,735 on the rolls to whom were paid approximately $140,000,000.

2. *Land Office.* — The Commissioner of the Land Office superintends the surveying and the selling of all the lands in the public domain (64). The amount of business transacted has been enormous (73), and there are millions of acres of land yet to be surveyed and sold.

3. *Patent Office.* — The Constitution gives to Congress power "to promote the progress of science and useful arts by securing, for a limited time, to authors and inventors, the exclusive right to their respective writings and discoveries." In the case of an invention, this right is called a "patent"; in case of a writing, it is a "copyright." A patent is valid for fourteen years, but the time may be extended; a copyright is good for twenty-eight years, and the term may be extended fourteen years.

4. *Indian Affairs.* — The Commissioner of Indian Affairs has charge of all those Indians in any of the states or territories that still preserve their tribal relations. Each of these tribes now lives upon a "reservation," which is a portion of the public domain (64) set apart for their use. Each reservation is controlled by an agent whose duty it is to protect the Indians in the enjoyment of those rights which the United States has secured to them by treaty.

5. *Census Bureau.* — Beginning with 1790, the general government has taken a census at the end of every decade. This is not merely an enumeration of the people, but also

contains a great amount of information helpful to the business interests of the country. It may be compared to the inventory which the merchant takes at the close of the year to find whether or not his venture has proved profitable. The first census reported nearly four million people, nearly seventeen and one-half per cent of whom were slaves. The Geological Survey and the Office of Education belong to the Department of the Interior.

387. Secretary of Agriculture. — Previous to 1889 this was an independent department (388) under the charge of a Commissioner of Agriculture; but it was then raised to the dignity of a cabinet position, and the head of it was called the "Secretary of Agriculture." There are several bureaus in this department, but two are of special importance.

1. *Experiment Stations.* — In all the states and territories the government maintains model farms to find out the kinds of plant growth best suited to the nature of the soil. These farms are under the direct charge of scientific men, who keep a very careful record of everything that pertains to the cultivation, growth, and yield of the crop, the results being published and distributed among the farmers. In this way they are enabled to change the nature of their farming operations, often with great profit, and always without any great danger of loss.

2. *Weather Bureau.* — One of the most useful services rendered to the people by the government is performed by the "Weather Bureau." All over the United States and upon the islands of the sea near the coast signal stations are maintained where officers watch carefully the

condition of the weather, and make daily and sometimes hourly reports to the central office in Washington. By means of these reports the chief officer at Washington is enabled to predict with great accuracy the probable state of the weather for the ensuing twenty-four hours, and thus be of invaluable assistance to farmers, and especially to vesselmen, who are warned of an approaching storm.

388. **Independent Departments.** — Besides these eight great departments the heads of which are officers of the Cabinet, there are others whose chiefs have not yet been thus honored. Among these are the Fish Commission, the Labor Department, the Bureau of American Republics, and the Government Printing-office, whose duties are fairly well indicated by their titles. Here too may be classed the Smithsonian Institution (391).

TOPICAL ANALYSIS

1. Cabinet government in England.
2. Advisers to the governors; the inner circle.
3. The American Cabinet; its selection.
4. English and American systems compared.
5. Organization of departmental business.
6. Secretary of State.
7. Secretary of the Treasury.
8. The Secretary of War.
9. The Secretary of the Navy.
10. The Postmaster General.
11. The Attorney General; five duties.
12. The Secretary of the Interior; different departments.
13. The Secretary of Agriculture; experiment stations; weather bureau.
14. Independent departments.

QUESTIONS AND EXERCISES

1. What are some of the duties of the Interstate Commerce Commission?

2. Give the historical derivation of the word "cabal."

3. Mention the Cabinet officers in their order.

4. The crime of smuggling is an offence against what law?

5. What three great statesmen have held the office of Secretary of State?

6. In what way has the Experiment Station in this state benefited the farmers?

7. Give an instance of a great storm foretold by the Weather Bureau.

8. What is a "training ship"?

9. Give in their order of importance five valuable patents granted by our government.

10. Make a list of five books written by American authors which you have read.

XXXV

DOMESTIC AND FOREIGN RELATIONS

389. **The Civil Service.** — By this is meant those officers who are engaged in conducting the domestic affairs of the nation. There are more than one hundred thousand of them, less than five hundred being elective (367). If the President is to be held responsible for the proper working of the governmental machinery, he ought to have something to say as to who should operate it. This power is given him by the Constitution; but as no human being could possibly spend the time to become acquainted with the merits of individual applicants, it is provided that he shall be assisted in his choice by the Senate. The Constitution also permits Congress to vest in the courts of law, the heads of departments, or even in the President himself, the right to appoint inferior officers.

Our civil officers are, therefore, divided into superior and inferior, there being about four thousand of the former class, known as "Presidential," and an indefinite number of the latter. In theory the President selects all of these four thousand from among the best applicants, the advice and consent of the Senate being to prevent any unfit selection; in reality the senators from each state dictate all of these appointments within their respective states. This practice has given rise to the term "senatorial

courtesy." The Senate has never yet refused to confirm the nominations of the President for members of his Cabinet; but, as to his other nominations, he is very careful to consult the wishes of those senators more particularly interested, and to make his recommendations accordingly.

390. Civil Service Reform. — As to the appointment of the inferior officers, there are two systems, — the "merit" and the "spoils." The theory of the first is that no one should hold an office who is not competent to fill it, and that he should be retained only so long as he is able to discharge its duties satisfactorily. The second theory holds "that to the victor belong the spoils." Under the early administrations few removals were made except for cause; but after 1828 it became the practice, whenever a new party went into power, to discharge all the old office-holders, and to replace them with those who agreed in politics with the new party. These officers were then expected to pay a percentage of their salaries toward creating a campaign fund (268) to secure the success of their party at the next election. Thus the offices, instead of being looked upon as a public trust, were considered as so much plunder to be divided among the party workers; men were appointed without reference to their fitness; and the public service was greatly injured.

Civil service reform aims to correct these abuses. In 1883 Congress passed a law dividing these inferior offices into "classified" and "unclassified"; it created a commission consisting of three members, and required all the candidates for any of the classified offices to pass a competitive examination upon questions prepared by this commission. These examinations are held at the custom

houses, post-offices, and other places in the various states, and any one who wishes may take them. When a vacancy occurs, the one holding the highest percentage is chosen.

391. Education. — The national government has no system of education, this being left to the states. The Office of Education is a bureau in the Department of the Interior, and the chief officer is called the Commissioner of Education. The principal duty of this bureau is to gather information as to the school systems of this and foreign nations and to publish it in an annual report, which is sent to all the larger educational institutions of the country. For the establishment and support of agricultural experiment stations, Congress has appropriated $15,000 annually to each state and territory which maintains an agricultural college, or an agricultural department in some other college or university.

1. *Smithsonian Institution.* — In 1835 the United States government came into possession of $515,169, which was willed to it by James Smithson, a British subject, to found an institution for "the increase and diffusion of knowledge among men." With these funds the Smithsonian Institution was founded by Congress in 1846, the President of the United States being the chairman of its board of directors. It seeks to carry out the purpose for which it was founded mainly by its publications, which are of great value and widely distributed. Connected with this and under the same management are the National Museum and the Bureau of Ethnology.

2. *Indian Schools.* — While the national government does not maintain a national system of schools, yet it does provide liberally for the education of Indian children, who

are looked upon as its wards. Located at different points on the reservation, which is sometimes hundreds of miles in extent, are small schools corresponding to those in the rural districts of the states. At the headquarters of the agency there are larger ones to which children are admitted from all parts of the reservation, and where they are clothed, fed, and taught at government expense. These may be compared to the ward schools in the cities. The government also maintains higher schools, as at Carlisle, Pennsylvania, and Phœnix, Arizona, into which are gathered the more promising children from the reservations. In all of these the pupils are taught how to read and speak English, but special attention is given to teaching them how to work. The boys learn to be farmers, carpenters, printers, or to follow almost any occupation which may afford them a living in after years, while the girls are taught dressmaking and domestic economy.

392. **Public International Relations.** — The United States is only one of a large number of nations, each of which is independent of the other in somewhat the same way as are individual families (33). But just as the latter are bound together by national law, so are the nations of the earth united by international law (160), the basis of both kinds being custom. International laws are either public or private in their nature, the former treating of the political rights which each state shall enjoy as one of a community of nations. It includes the settlement of claims between individual nations; but is chiefly concerned with the duties of neutral nations in time of war, the treatment of prisoners, the ownership and preservation of property upon the high seas, and it prescribes the forms which

shall regulate the conduct of nations in their intercourse with each other. There is no permanent international legislature; but a temporary one composed of delegates from each of the great nations may be called into existence when occasion requires. Such was the Congress of Vienna which rearranged the map of Europe after the defeat of Napoleon at Waterloo. The chief sources of international law are the decisions of international courts created for a special purpose, the Roman law, and the works of text-writers. The executive department consists of an international military force, some troops being contributed by each nation, and the whole placed under the command of one general, as in the Chinese War in 1900. There is no permanent international judiciary; but disputed claims between nations are often submitted to courts of arbitration.

393. **Private International Law.** — Private international law treats of the civil rights which the subjects of one nation shall enjoy within the territories of another. These are regulated to a certain extent by custom, but more particularly by treaties, which are agreements entered into by two or more nations. The right to make a treaty belongs to a sovereign state (307), and hence is denied to the states of the union. The President negotiates all treaties in this country through the Department of State, but they must be approved by a two-thirds vote of the Senate (369). The House of Representatives may also defeat a treaty, if money is to be appropriated to carry out its provisions. Whenever a state law conflicts with a treaty it is void.

1. *The Diplomatic Service* consists of those officers whose duty it is to transact business between this and foreign countries. The highest in rank is called an Ambassador;

the second, Envoy Extraordinary and Minister Plenipotentiary; and the third, Minister Resident. Quite generally the term "minister" is applied to all three. These officers receive from $10,000 to $17,500, the latter sum being paid only at Paris, London, St. Petersburg, and Berlin. The President receives all foreign ministers (380), and ours are presented to the king, queen, or chief ruler of the nation to which they are sent. Each minister's official family, called the legation, consists of a secretary and such clerks as may be deemed necessary. The minister, acting under the direction of the State Department, assists in negotiating treaties, looks after the interests of American citizens, and seeks to promote friendly relations with the government.

2. *The Consular Service* is organized to enforce the commercial laws, to protect the rights of American citizens, and to assist our commercial, manufacturing, and agricultural interests by giving to the State Department such information as will aid in introducing our products into foreign countries. There are about thirty consuls general, some of whom are ministers resident, and over three hundred consuls. They are stationed at the chief seaports, take charge of the estates of American citizens dying abroad, and look after the interests of American vessels and seamen. In China, Turkey, and in those countries where the administration of justice does not accord with our ideas of fairness, the consul also acts as a magistrate having both civil and criminal jurisdiction. Elsewhere such matters are intrusted to the courts of the country.

394. **The Army.** — No government would be able to preserve domestic tranquillity, nor command the respect of other nations, if it could not repress disorder at home and

make war upon any nation which should trespass upon the rights of its citizens. To accomplish this the United States possesses a military establishment consisting of an army and a navy.

1. *The Regular Army* consists of fifteen regiments of cavalry, thirty regiments of infantry, thirty batteries of field artillery, one hundred and twenty-six companies of coast artillery, and three battalions of engineers. The enlisted men in two regiments of infantry and two of cavalry are colored. Up to the time of the Spanish-American War the number of enlisted men in the army could not exceed thirty thousand, but the limit has been increased to one hundred thousand. All enlistments are for a term of five years. Recruits on entering the army for the first time must be effective, able-bodied men, and between the ages of sixteen and thirty-five years at the time of their enlistment; but this limitation as to age does not apply to soldiers who re-enlist. Minors under the age of sixteen, insane or intoxicated persons, deserters from the military service of the United States, and criminals, will not be accepted. No minor over sixteen will be mustered in without the consent of his parents or guardians, provided he has such parents or guardians entitled to his custody or control.

2. *Military Rank* is that character or quality bestowed upon military persons which marks their station, and gives them the right to exercise military control within the limits prescribed by law. As to their rank, members of the army are divided into commissioned officers, non-commissioned officers, and musicians, artificers, and privates. The term "officer" includes only commissioned officers, all the rest being called "soldiers." The highest officer is the "general

of the army," and the lowest in rank is the second lieutenant. The corporal holds the lowest rank as a non-commissioned officer. The pay of the general of the army is $13,500 per annum, while the private receives $13 per month during the first year of his enlistment. The pay of those holding intermediate ranks is found between these two sums.

3. *Bureau of Military Justice.* — This consists of one judge advocate general, with the rank of brigadier general, and one assistant, with the rank of colonel of cavalry. There are also eight judge advocates of the army, with the rank of major of cavalry, who perform their duties under the direction of the judge advocate general. Courts-martial, or military courts, are of two kinds, — general and regimental, or garrison. Capital offences are tried by general courts-martial, which consist of not less than five nor more than thirteen members; but a soldier for an offence not capital may be tried by a garrison court-martial consisting of three members. In time of war soldiers charged with offences not capital are tried by a field officer detailed for that purpose. A military prison is maintained by the government at Rock Island, Illinois.

4. *Educational.* — The United States is divided into territorial departments, each of which is under the command of a major general assigned by the President. Within these territorial divisions are "posts" established by the Secretary of War, each of which is garrisoned by one or more companies of soldiers. Practical and theoretical instruction is given to the officers in the science and art of war; post schools are organized for the enlisted men, the school terms aggregating not less than four months each

year, the teachers being appointed by the commanding officer, and the branches taught being such as can be pursued with profit. Schools for the instruction of the children of the officers and of the enlisted men are also organized when there are no convenient educational privileges. Libraries and reading rooms are also furnished, and the soldiers are encouraged to erect buildings for bowling alleys and other amusements. Service schools are maintained as follows: An artillery school at Fort Monroe, Virginia; an infantry and cavalry school at Fort Leavenworth, Kansas; a cavalry and light artillery school at Fort Riley, Kansas; and a medical school at Washington, D.C. The chief training school is the military academy at West Point, New York (382), to which cadets are admitted between the ages of seventeen and twenty-two years.

395. **The Navy.** — The navy of the United States is organized upon a plan similar to that of the army. The officers are divided into three classes, — line, warrant, and petty. There are eleven ranks in the officers of the line, the highest being that of admiral, corresponding to that of general of the army, and the lowest being the midshipman. The ensign, who is next in rank above the midshipman, corresponds to the second lieutenant in the army. After five years' service the President may appoint boatswains, gunners, carpenters, and sailmakers to a rank equal to ensigns; and after ten years' service to a rank equal to that of master, or first lieutenant in the army. These are called "warrant officers." All others are termed "petty officers." The admiral receives $13,000 per annum, and the midshipman $1000 when at sea and

$800 when on shore duty. The cadet-midshipman receives $500 (383). The pay of petty officers, seamen, and others is fixed by the President, but the aggregate amount must not exceed the appropriation. The marine corps is a body of troops specially trained for military duty on shipboard.

For the construction and repair of war vessels the government maintains shipyards, and also arsenals for the storage of arms and ammunition. The total number of vessels constituting the navy is divided into squadrons, which are assigned to duty in various parts of the world. Each squadron is under the command of a line officer not lower in rank than a commander, who is next below a captain. He receives his appointment from the President and has the title of "flag-officer." The discipline in the naval service is necessarily more strict than in the army, and every one must yield implicit obedience to the captain of a ship. Line and warrant officers can only be confined for a period of ten days, unless a longer period is necessary to bring the case before a court-martial; but petty officers and others may be imprisoned in irons, placed in solitary confinement for seven days, or given extra duties.

TOPICAL ANALYSIS

1. The civil service; superior and inferior officers.
2. Civil service reform; the classified service.
3. No national system of education; Smithsonian Institution; Indian schools.
4. Public international relations.
5. Private international law; the diplomatic service; the consular service.

6. The army; its composition; military rank; bureau of military justice; educational features.

7. The navy; discipline on men-of-war.

QUESTIONS AND EXERCISES

1. When neither senator from a state belongs to the same party as the President, who then dictates the appointments for that state?

2. Give some objections to the method of appointment by competitive examination.

3. Ought the Commissioner of Education to be a Cabinet officer?

4. What subjects are included under domestic economy?

5. Give another example of an international legislature.

6. Name the five great nations of the world in the order of their strength.

7. Is $17,500 per annum a large salary for the minister at the Court of St. James?

8. How does an arsenal differ from an armory?

9. Give an account of the battle of Manila.

10. How many of our Presidents have also held the rank of general in the army?

XXXVI

THE NATIONAL LEGISLATURE

396. **National and State.** — The Congress of the United States consists of two houses, a Senate and a House of Representatives, usually for the sake of brevity called the House. It is organized upon the same plan, transacts its business in a similar manner, its members enjoy the same freedom from arrest (338), and are subject to influences of a character like to those employed in the legislatures of the states (344). The national differs from the state legislature chiefly in the nature of the laws which it passes, in the size of its membership, the number and importance of its committees, and the generally enlarged scale upon which everything is done.

397. **Sessions of Congress.** — The term of a Congress begins at twelve o'clock noon on the fourth day of March in the odd-numbered years, and continues exactly two years. The Constitution, however, provides that the first meeting of a new Congress shall begin on the first Monday of December, and as the first Congress met on that date in 1789, the first session of every succeeding Congress has fallen upon the odd-numbered years. This is called the long session, because there is nothing to prevent its lasting until the first of the succeeding December, and it usually does continue until midsummer. The short session is limited in its duration to a little over three months.

398. **The Senate.** — The Senate of the United States is composed of two members from each of the several states of the Union, who are elected for a term of six years. As only one-third of the senators retire every two years, and as very many of these are reëlected, the Senate may be looked upon as a permanent body. This feature, together with its comparatively small size and the ability of its members, makes it very influential.

1. *Special Powers.* — The Senate is an executive, a legislative, and a judicial body. It acts as a check upon the President in making appointments (389), and when considering his nominations holds an executive session from which the general public is excluded. It forms an essential part of the treaty-making power, with which the House has ordinarily nothing to do; prevents the passage of many unwise measures often introduced into the House for political effect; and by reason of the greater familiarity of the senators with public affairs, is able to correct the mistakes into which the less experienced members of the House are liable to fall. The Senate acts as a court of impeachment (323) for high political officers, and is the sole judge of the qualifications of its own members.

2. *Organization.* — The chief officer of the Senate is the Vice-President, whom it elects upon any failure of the electoral college to do so (374). It also chooses a president *pro tempore* to serve in the absence of the Vice-President. It selects its committees by ballot, and rearranges them every two years upon the coming in of the new senators.

3. *Membership.* — A senator is elected by a majority vote of the two houses of his state legislature in joint session, after each house has cast a separate ballot. If,

for any reason, a vacancy should occur while the legislature is not in session, the governor makes a temporary appointment; but the appointee cannot hold the position longer than until the close of the session immediately following, and the state will then have only one senator until the legislature does make a selection. A senator must be at least thirty years old, an inhabitant of the state he represents, and must have been a citizen of the United States for nine years immediately preceding his election. The salary of a senator is $5000 a year and necessary travelling expenses. He is exempt from arrest on a civil warrant (179) during the session of Congress, and while on his way to and from the national capital.

399. **The House.**—The national House consists of representatives from every state in the union, who are elected from congressional districts for a term of two years. As all of the members go out of office at the same time, the House must be considered a transient body. Enough of the old members, however, are always returned to be of great assistance in organizing the new House.

1. *Ratio of Representation.*—Each state is entitled to at least one member in the House. Where it is entitled to more than one, the number is found by dividing the total population of the state as shown by the last census of the United States, excluding Indians not taxed, by the congressional ratio of representation. This ratio is the quotient arising from dividing the total population of the United States according to the last census, excluding Indians not taxed, by the number of members the House is to contain after the new apportionment, which is had after each decennial census. The Constitution fixed the size of the

House at sixty-five until after the first census should have been taken. The first ratio was made 33,000, under which the Third Congress had 105 and the Fourth 141 members. At present the House has 386 members, the ratio being 193,141. Each territory is entitled to one delegate, who may speak but not vote (299).

2. *Special Powers.* — The House for the most part is a legislative body, but acts in an executive capacity when it brings to trial a high government official before the bar of the Senate sitting as a court of impeachment. Bills calling for an appropriation of money must be introduced into the House, and this fact might give it in some instances the power to defeat a treaty. It is the sole judge of the qualifications and election of its own members. It elects the President when there is no choice in the electoral college.

3. *Organization.* — The chief officer is the speaker, whom the most numerous political party in the House elects from its own members. He is always a member who has served one or more terms, for one without this experience could not properly perform the duties of the office. Next to the President, the speaker is the most powerful officer in the government. This is because he appoints all the committees, and may refuse to allow any one to speak upon a bill. In this way he can largely control legislation. The speaker receives $8000 a year and travelling expenses. The house has a sergeant-at-arms and deputies, doorkeepers, pages, and other officers to preserve order and to assist the members in the despatch of business.

4. *Congressional Districts.* — Each state having more

than one representative is divided into districts, which shall contain as near as may be a population equal to the ratio of representation. The intention is to form a compact territory; but sometimes to gain a political advantage the counties will be joined in almost any way so long as they are contiguous, and we often have "shoestring" districts. Missouri, it is said, once contained a district longer than the state itself, so formed as to contain a large number of negroes. A district in Massachusetts of this character was once given wings and claws by a noted artist, and because Elbridge Gerry, then governor of the state, was supposed to have been the author of it, the thing was called a gerrymander. This was an injustice to Governor Gerry, who was opposed to the plan. Sometimes a member is elected by the whole state, and is then called a congressman-at-large. To vote for a congressman one must also have the right to vote for a member of the most numerous branch of the state legislature (85).

5. *Membership.* — A representative must be at least twenty-five years old, have been for seven years a citizen of the United States, be an inhabitant of the state from which he is sent, and custom has decreed that he shall also be a resident of the district he represents. When a vacancy occurs, the governor issues a writ of election to fill it. A representative receives the same salary and the same allowances for travelling expenses as does a senator. Each senator and representative is allowed a clerk.

400. **The Committee System.** — The method of enacting laws in the national legislature is about the same as in the state (340, 341), except that more is intrusted to the com-

mittees. These are classified as "standing," which act through two sessions, and "select," or such as are given charge of particular subjects of current interest. To some one of these committees each and every bill is referred; arguments and evidence are produced for and against it; and in most instances the decision of the committee seals its fate.

This system has been criticised because it destroys the unity of the House as a legislative body; prevents the capacity of the best members from being brought to bear upon any one piece of legislation; cramps debate; lessens the cohesion of legislation; gives facilities for the exercise of corrupt and underhand influences; reduces the responsibility of the whole House and of every member not on the reporting committee, and throws undue power into the hands of the chairmen of the more important committees. On the other hand, it enables the House to deal with a far greater number of measures; kills off many unimportant and even dangerous bills; permits a close scrutiny of the administrative departments; and secures to the House sufficient time for the consideration of those subjects which are of vital importance to the nation.[1] Every system is open to criticism and improvement; and the very fact that the dangers mentioned are so well understood is a safeguard against their occurrence.

401. **Congressional Legislation.** — In considering the nature of the laws passed by Congress, it must be borne in mind that the whole American system of government aims to intrust local measures to local bodies, reserving to higher bodies subjects of general interest (301). The law-

[1] Bryce's *American Commonwealth.*

making power in any government determines its form (20), and the name makes little difference. It is the nature of the laws that marks the real distinction between a republic and a monarchy. In name Mexico is a republic; in fact, it is a despotism as real as though the President bore the title of emperor, and wore his crown for life. Congress has more power than does the judicial or executive departments, because the former cannot interpret nor the latter enforce a law that does not exist. If Congress refuses to enact, the other departments are helpless.

If, therefore, you should examine the Revised Statutes of the United States, you would search in vain for any law relative to the disposition of property by will, to commercial paper, or to the government of cities and villages, for these are topics which are intrusted wholly to the state legislature. But when the subject is one which affects the citizens of various states, then Congress may act. The national legislature will not enact a law regulating the sale of liquor at retail within a state; but it will require the authorities of one state to permit the sale of liquor in an original package sent into the state by a citizen of another state for the express purpose of sale. Hence you will find an act creating a commission on interstate commerce, and defining its powers.

402. Express Powers. — The Constitution of the United States expressly confers upon Congress the right to legislate upon seventeen different subjects (Art. I, Sect. 8), and the following section specifies nine restrictions. The number is so small and the words used are so few that the whole might be learned in an afternoon; but to each statement has been given a breadth of meaning which

does not appear on the surface. For instance, the power is given "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." The meaning of the word "commerce" is not, however, to be confined to traffic, to the buying and selling commodities (118); but it comprehends commercial intercourse of whatever nature, whether by ships, railroads, telegraphs, or telephones, and however conducted, provided it be not confined within the boundaries of a single state. Probably the most important of these express powers is the right to borrow money, levy and collect taxes, and to pay debts.

403. **Implied Powers.** — As an incident to every express grant there must be attached the right to provide the means necessary to render that grant effective. Hence the power given to Congress to establish a system of courts inferior to the Supreme Court, carried with it impliedly the power to prescribe the limits of jurisdiction, provide judges, and appoint court officers. No one has ever held that there were no powers implied in the Constitution; nor that all the powers to be exercised by the states were expressly reserved in the Constitution (Art. I, Sect. 10). But just where the line should be drawn between these two views soon became a question of party politics, which to a certain extent divides the political parties of to-day. The Federalists, at whose head stood Hamilton, now represented by the Republicans, believed in a liberal construction of the Constitution, and hence were called "loose-constructionists" (28); the anti-Federalists, now Democrats, with Jefferson as a leader, believed in a close interpretation, and hence were termed

"strict-constructionists." The Federalists relied upon paragraphs 1 and 18 of Sect. 8, Art. 1, of the Constitution, sometimes called the "elastic clauses," to support their views; while their opponents cited the Tenth Amendment.

404. **Magnitude of Business.** — In comparing national with state affairs, one is particularly impressed with the magnitude of the former. Everything is done upon a large scale. The Senate contains more members than do several state legislatures; the House has more than the legislatures of some two or three of the states combined; and there are more persons in the employment of the government than reside in some of the states. The most expensive building in any city is likely to be the post-office; the national capitol, the national library, and the department buildings are beautiful beyond description; and even the yearly cost of maintaining one of them would be a handsome fortune to the most of us. The finest ships that float the ocean are some of our men-of-war; including the pension list, the annual expense of maintaining our army runs into the scores of millions; and the total annual expenditures of the government aggregate hundreds of millions of dollars. At these material evidences of the greatness of our nation we are lost in astonishment; but when we reflect that all this is but a small part of the real wealth of the country, and that both our population and resources are developing with giant strides, we can only dream how great our country will be in a century hence. Lord Rosebery, in speaking lately of what might have followed had the colonies remained with England, said that it might have resulted in the transfer of the seat of govern-

ment to these parts, and the retention of Britain "as an historical shrine, the European outpost of the world's empire."

TOPICAL ANALYSIS

1. National and state legislatures compared.
2. Sessions of Congress; long and short terms.
3. The Senate; special powers; organization; membership.
4. The House; ratio of representation; special powers; organization; congressional districts; membership.
5. The committee system; criticism and defence.
6. Congressional legislation; nature of the laws of the United States.
7. Powers of Congress; express powers; implied powers.
8. Magnitude of subjects for congressional action.

QUESTIONS AND EXERCISES

1. Find the number of the Congress which was in session from 1861 to 1863.

2. How many senators did the Fifty-first Congress contain?

3. Should senators be elected by popular vote?

4. From the number of congressmen to which it is entitled find the population of this state according to the last census.

5. Mention three great statesmen who have been speakers of the House.

6. Given the membership of the House and the ratio of representation; find the population of the United States, excluding Indians not taxed.

7. Name the most important committee in the House.

8. The right to levy taxes includes what implied power?

9. Mention other subjects with which Congress may not deal.

10. Who is Lord Rosebery?

11. May one who is not a citizen of the United States ever vote for a congressman?

XXXVII

THE NATIONAL JUDICIARY

"Few American institutions are better worth studying than this intricate judicial machinery; few deserve more admiration for the smoothness of their working; few have contributed more to the peace and well-being of the country."

— BRYCE'S *American Commonwealth*.

405. Historical. — Under the Articles of Confederation there was no national judiciary; but in its stead were thirteen sets of state courts, each having the power to interpret and apply the acts of Congress for its own locality. Obviously if there was to be formed a "more perfect union" under the Constitution, the powers granted to the new national legislature, and the laws which it should pass by virtue of them, must be construed by a single set of courts at the head of which should stand a supreme, or final court of appeal. This system of courts must be entirely separated from the state tribunals; must have its own officers to enforce its judgments and decrees (367); and must be made independent of the legislative and executive departments, except in so far as necessary to secure on the part of the judges a faithful discharge of their duties. The first object was attained by carefully specifying (Constitution, Art. III, Sect. 2) the classes of subjects which were to come within their jurisdiction; the

second, by giving to Congress power to establish a complete system of courts with proper gradations, and provided with all the necessary officers; and the third, by giving the judges a life tenure, subject only to impeachment by a two-thirds vote of the Senate, and a fixed salary which cannot be diminished during the judge's continuance in office. The territorial courts are not created by Congress under this power granted by the Constitution, but in the exercise of the general sovereignty of the United States over the territory it may possess. The judges of such courts may, therefore, be appointed for definite terms, and are removable by the President.

406. **Departments Interdependent.** — In order to have the governmental machine work smoothly and effectively, it is necessary that each department should be independent in its own sphere, and also that each should support the other. By combining their forces and increasing the number of judges in the Supreme Court, Congress and the President could probably secure a decision favoring their views; but such action would very likely receive a severe punishment at the ensuing election, for the people are proud of their Supreme Court, and would tolerate no such interference without the strongest reasons. If the President and judiciary should attempt to override congressional action, the remedy would be impeachment.

The only way in which the Supreme Court could reach the President would be by a judgment or decree (282), which its marshal would be called upon to enforce. If the President should refuse to obey the marshal, the latter must, as a last resort, depend upon the military to assist him. This the President as Commander-in-chief would not

permit, and thus the court would be powerless. If the President should decide not to allow an order of the court to be enforced, it could not be done. A case of this kind happened in 1861, when President Lincoln refused to permit a military commander to be released upon a writ of *habeas corpus*, issued by Chief Justice Taney.

407. **United States Commissioners.** — The judicial officer lowest in rank in the United States government is the United States commissioner. The law provides that each of the district courts of the United States may appoint in the district for which it is held so many discreet persons as it may deem necessary to be United States commissioners. They are authorized to issue warrants for the arrest of persons charged with a violation of the laws of the United States, and to hold them to security of the peace; to take bail and administer oaths in any civil case where required or allowed in the circuit or district courts; to issue warrants for the arrest of foreign seamen, and to apprehend and to commit to jail fugitives from justice from other countries, provided an arrest is authorized by treaty with the United States. Upon the criminal side these officers are committing magistrates, with powers similar to those of the justice of the peace (192), and must keep a record of all such proceedings. Upon the civil side they have no jurisdiction; but like a notary they may take testimony for use in the district or circuit courts. The commissioners are paid by fees.

408. **District Courts.** — The district court is the lowest federal court in rank, and covers the smallest extent of territory, there being one or more in each state. The district judge must reside in the district, and receives a salary

ranging from $3000 to $5000, with no allowance for travelling expenses. Each court is provided with a clerk and a marshal, and as many deputies as the circumstances require. There is also a district attorney, who acts under the supervision of the Attorney General (385). At least two sessions of this court are held in each subdivision of the district, and as many special sessions as the judge may find necessary. For certain purposes these courts are considered open at all times.

The district court has jurisdiction of nearly all crimes and offences under the laws of the United States, committed upon the high seas, or within their respective districts, the punishment of which is not capital, and the trial is by jury. As a court of admiralty it has a jurisdiction well-nigh exclusive over vessels upon navigable waters, over prizes taken in war, and over all maritime contracts, which are such as relate to transactions upon navigable waters; but the common law remedy is not taken away, and suits upon maritime contracts may also be brought in the state courts. Here also bankruptcy proceedings are brought. A bankrupt is a trader who is unable to pay his debts. The law provides that when such a debtor shall surrender all his property outside of his exemptions (39), the court may relieve him from any further liability.

In criminal cases where the punishment is death an appeal lies directly to the Supreme Court; so also in prize cases where the amount is over $2000; also when the jurisdiction of the court is in issue, and when federal questions are involved; but otherwise to the Circuit Court of Appeals.

409. **Court of Claims.** — This court was organized to settle

the claims of private persons against the federal government. It consists of a chief justice and four judges, and holds its sessions at the national capital. These claims must arise upon contract express or implied, and not from a wrongful act (162). Pensions and war claims are excluded. The district courts have concurrent jurisdiction where the amount does not exceed $1000, and the circuit courts where the amount is between $1000 and $10,000. Heads of executive departments may refer certain classes of disputed claims to this court for settlement; but all claims will be barred by limitation if not presented within six years after the right of action accrues (213). An appeal will lie in most cases to the Supreme Court.

410. Circuit Courts. — For judicial purposes (348 : 5) the several states of the union are combined into nine groups, in each of which is established a circuit court (280). To each one of these circuits one of the justices of the Supreme Court is allotted, who is called the circuit justice. It is the duty of the chief justice of the Supreme Court and of each associate justice to attend at least one term of the court in the circuit to which he is attached not less than once in two years. Each circuit has two judges, and seven of them have three circuit judges, each with the same power therein as the associate justice. The salary of a judge is $6000, and he must reside within the circuit.

Regular terms of this court may be held by the circuit justice, or by either circuit judge, or by any two of the judges sitting together. Cases may be tried by each of the judges sitting apart by direction of the presiding justice or judge, who designates the business to be done by each.

Sessions may also be held at the same time in the different districts of the same circuit.

The circuit courts have original and concurrent jurisdiction with the courts of the several states of all suits of a civil nature, at law or in equity (282), where the amount in dispute exceeds, exclusive of interest and costs, the sum of $2000, provided the claim arises under the laws of the United States. It has no appellate jurisdiction. It has exclusive cognizance of all capital crimes and offences arising under the laws of the United States, with a few exceptions, and concurrent jurisdiction with the district courts in other cases. Here also suits must be brought for infringements on patents and copyrights. Appeals lie directly to the Supreme Court, if there shall have been raised the question of jurisdiction, or when the penalty is capital; but not otherwise, unless the decree or judgment exceeds $5000.

411. **Circuit Court of Appeals.** — In each circuit there is a court of appeals, consisting of three judges, two of whom constitute a quorum. The chief justice of the Supreme Court, or the associate justice assigned to the circuit, the circuit judges within the circuit, and the several district judges within the circuit are competent to sit as judges of the Circuit Court of Appeals within their respective circuits. The supreme justice presides if he is present, otherwise the circuit judge who holds the oldest commission. If there be not a full court at any time, one of the district judges may be called in.

The jurisdiction of this court is wholly appellate. In criminal cases not capital the decision is final; but where the penalty is death, an appeal lies to the Supreme Court.

In civil cases where the matter in controversy exceeds $1000 an appeal may also be had; but it must be taken within six months after the entry of the order, decree, or judgment sought to be reversed.

412. **The Supreme Court.** — The Supreme Court of the United States consists of a chief justice and eight associate justices, any six of whom constitutes a quorum. No final hearing of any case can be had unless a quorum be present, but a less number may make preparatory orders. Each associate justice receives $10,000 a year, and the chief justice $500 additional.

The Supreme Court has original and exclusive jurisdiction of all controversies of a civil nature where a state is a party, except between a state and its citizens, or between a state and citizens of other states, or aliens, in which last case it has original, but not exclusive, jurisdiction. It also has exclusive jurisdiction of suits or proceedings against ambassadors, or other public ministers (394), or their domestics, so far as a court of law can have consistently with the principles of international law; and original, but not exclusive, jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul or a vice-consul is a party. It is said that the decisions of our Supreme Court on international and admiralty law are more widely cited than those of any other tribunal in Christendom.

The appellate powers of the Supreme Court are given by the Constitution; but they are limited and regulated by statute. It is essential to appellate jurisdiction that it raises and corrects proceedings in a case already begun (177). In certain cases, as when the jurisdiction of the

lower court is called in question, an appeal may be made directly; and instruction upon any point of law raised before it may be asked by some of the lower courts from the Supreme Court. The Supreme Court may issue writs of prohibition (349) to district courts when proceeding as courts of admiralty and maritime jurisdiction; and writs of *mandamus* (289) to any court appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a state, or an ambassador or other public minister, or a consul or a vice-consul, is a party. Mandamus will not issue to compel an officer to act while the political department of the government has control; but if an officer should refuse to perform a merely ministerial duty (271), the court would interfere.

413. **Common to the Courts.** — The judges of the foregoing courts are nominated by the President and confirmed by the Senate; are appointed for life; must take the same oath; are prohibited from practising law; and each is entitled to resign and receive full pay for life after having held his office for ten years, provided he has arrived at the age of seventy years. The several judges and the commissioners may issue search warrants authorizing any officer or person to enter a house to look for counterfeit money, or for tools used in its manufacture; or to search for and seize merchandise upon which customs duties have not been paid; or to discover frauds upon the revenue. The judges may issue the customary writs of *habeas corpus* (220) and others for the security of person and property, and to carry out their judicial orders; grant new trials, and hold to security of the peace. In all the courts

of the United States the parties may plead their own causes, or they may employ an attorney. Juries are drawn and trials are conducted after the manner pursued in the courts of the state where the trial is held.

TOPICAL ANALYSIS

1. Historical; necessity for national judiciary; general plan.
2. Departments interdependent; the courts and Congress; the President and the courts.
3. United States commissioners.
4. District courts; organization; jurisdiction; appeals.
5. Court of claims; organization; jurisdiction; appeals.
6. Circuit courts; organization; sessions; jurisdiction; appeals.
7. Circuit Court of Appeals; organization; jurisdiction; appeals.
8. Supreme Court; organization; jurisdiction; supervisory powers.
9. Powers common to all the courts.

QUESTIONS AND EXERCISES

1. From the Constitution find when one is entitled to a jury in a civil case.

2. Who presides when a President is tried by impeachment?

3. Why should the Supreme Court have original jurisdiction in the case of ambassadors and their servants?

4. Give an account of the Dred Scott decision.

5. Why was the Eleventh Amendment added to the Constitution?

6. What is the duty of the Supreme Court reporter?

7. Where is the district court held in this district?

8. What great service did Chief Justice Marshall render this country?

9. Why should a judge reside within his district?

10. Who appoints the district attorney?

APPENDIX A

FORMS FOR A CIVIL CASE IN A JUSTICE'S COURT

As the purpose in conducting a class exercise in a civil case in a justice court is to make the pupils familiar with the local usage, it will be better to procure forms of some justice of the peace in the vicinity. For such as are unable to do this, the following forms are given: —

No. 1.

SUMMONS

In the Justice's Court of _____ Township (or Precinct), County of _____, State of _____.

_____
Plaintiff.
vs.
_____
Defendant.
} *Summons.*

Action brought in one of the Justice's Courts of _____ Township, County of _____, State of _____.

In the name of the People of the State of _____.

To _____, Defendant, Greeting: —

You are hereby summoned and required to appear in an action brought against you by the above-named plaintiff in one of the Justice's Courts of _____ Township, in and for the County of _____, in the State of _____, and answer to a declaration filed in said Justice's Court, on the _____ day of _____, 19__, or judgment by default will be entered against you.

Given under my hand at _____, this day of _____, 19__.

_____
Justice of the Peace for said Township.

No. 2.

DECLARATION (COMPLAINT)

In the Justice's Court of _____ Township, County of _____, State of _____.

_____

Plaintiff.

vs.

_____

Defendant.

Plaintiff above named files this declaration against the above-named defendant, and alleges: —

First, that plaintiff is a resident of _____ County, State of _____, and that defendant is a resident of _____ Township in said County.

Second, that on the _____ day of _____, 19__, defendant became indebted to plaintiff in a large sum, to wit, the sum of _____ Dollars ($) for ten thousand feet of beech and maple logs, sold and delivered to said defendant by _____, agent for plaintiff.

Wherefore plaintiff demands judgment for $, with interest and costs of suit.

_____

Attorney for Plaintiff.

No. 3.

RETURN OF SUMMONS

I hereby certify and return that I received the within summons on the _____ day of _____, 19__, and that I served the same on the defendant named therein on the _____ day of _____, 19__, by showing him the original and delivering to him a copy thereof at _____ in said County.

_____

Fees, $ _____. *Constable.*

No. 4.

FORM TO AUTHORIZE ONE NOT A CONSTABLE TO SERVE A SUMMONS

In the Justice's Court of _____ Township, County of _____, State of _____.

_____

Plaintiff.

vs.

_____

Defendant.

On the request of the within named plaintiff, and deeming it expedient so to do, I hereby empower _____, who is a person of lawful age, and not a party to or interested in the suit, to execute the within process.

_____ Township, _____, 19---.

_____

Justice of the Peace.

_____

The Jury.

No. 5.

AFFIRMATION OF CONSTABLE

You do solemnly affirm, that in the suit now pending before me wherein A _____ B _____ is plaintiff and C _____ D _____ is defendant, you will select according to your best judgment, and without favor or partiality to either party, the names of eighteen inhabitants of this County who are qualified to serve as jurors in the County Court, and in nowise of kin to the plaintiff or defendant, nor interested in said cause, from whom to form a jury for the trial of said cause.

No. 6. VENIRE

In the Justice's Court of _____ Township, County of _____, State of _____.

To any Constable of said County, Greeting: —

In the name of the People of the State of _____, you are hereby required to summon A _____ B _____, C _____ D _____, E _____ F _____, G _____ H _____, I _____ J _____, and K _____ L _____, to appear before the undersigned, one of the Justices of the Peace of the Township of _____, in said County, at _____ in the _____ noon, to make a jury for the trial of an action wherein A _____ B _____ is plaintiff and C _____ D _____ is defendant. And have you then and there this precept.

Given under my hand, at the Township aforesaid, the _____ day of _____, 19--.

_____

Justice of the Peace.

No. 7. RETURN OF VENIRE

I certify that, by virtue of the within precept, I have personally summoned each of the several persons therein named, to appear at the time and place mentioned.

_____

Dated, _____, 19--. *Constable.*

No. 8.

AFFIRMATION OF JUROR ON CHALLENGE

You do solemnly affirm that you will true answers make to all such questions as may be asked in relation to your competency as a juror, in this action between A _____ B _____, plaintiff, and C _____ D _____, defendant.

No. 9.

AFFIRMATION OF JURORS BEFORE TRIAL

You do solemnly affirm that you will well and truly try the matter in difference between A _____ B _____, plaintiff, and C _____ D _____, defendant, and unless discharged by me, a true verdict give, according to law and evidence.

No. 10.

AFFIRMATION OF CONSTABLE ON TAKING CHARGE OF THE JURY WHILE DELIBERATING ON A VERDICT

You do solemnly affirm that you will keep the persons sworn as jurors on this trial apart in some private and convenient place; that you will not communicate with them yourself, either orally or otherwise, nor suffer any one else to do so, unless by my order; and that you will not, before they render their verdict, communicate to any person the state of their deliberations, or the verdict they may have agreed upon.

No. 11. SUBPŒNA

In the Justice's Court, _____ Township, County of _____, State of _____.

_____

Plaintiff.

vs.

_____

Defendant.

To _____, Greeting: —

In the name of the People of the State of _____, you are commanded to appear personally before me, a Justice of the Peace of _____ Township in said County, at my office, on the _____ day of _____, 19__, at _____ o'clock in the _____ noon of that day, to testify the truth according to your knowledge in the above entitled cause. Hereof fail not at your peril.

Given under my hand, at _____ the _____ day of _____, 19__.

_____

Justice of the Peace.

No. 12. AFFIRMATION OF WITNESS

You do solemnly affirm that you will testify the truth, the whole truth, and nothing but the truth relating to the cause now pending before me, wherein A _____ B _____ is plaintiff and C _____ D _____ is defendant.

APPENDIX B

CONSTITUTION OF THE UNITED STATES OF AMERICA

WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I

SECTION I. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

SECT. II. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECT. III. 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECT. IV. 1. The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECT. V. 1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECT. VI. 1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the treasury of the United States. They shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECT. VII. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of

adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECT. VIII. The Congress shall have power

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas and offences against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the

United States, and to exercise like authority over all places purchased by the consent of the legislature of the State, in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; — and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof.

SECT. IX. 1. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year 1808; but a tax or duty may be imposed on such importation, not exceeding $10 for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECT. X. 1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

SECTION I. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

4. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law pro-

vide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

6. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

SECT. II. 1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECT. III. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECT. IV. The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

SECTION I. 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECT. II. 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers and consuls; — to all cases of admiralty jurisdiction; — to controversies to which the United States shall be a party; — to controversies between two or more States; — between a State and citizens of another State; — between citizens of different States; — between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECT. III. 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV

SECTION I. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECT. II. 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who

shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECT. III. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECT. IV. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendments which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and

the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

[Signed by] Go WASHINGTON,
Presidt and Deputy from Virginia.

NEW HAMPSHIRE
John Langdon,
Nicholas Gilman.

MASSACHUSETTS
Nathaniel Gorham,
Rufus King.

CONNECTICUT
Wm. Saml. Johnson,
Roger Sherman.

NEW YORK
Alexander Hamilton.

NEW JERSEY
Wil: Livingston,
David Brearley,
Wm: Paterson,
Jona: Dayton.

PENNSYLVANIA
B Franklin,
Thomas Mifflin,
Robt. Morris,
Geo. Clymer,
Tho. Fitz Simons,
Jared Ingersoll,
James Wilson,
Gouv Morris.

DELAWARE
Geo: Read,
Gunning Bedford, Jun,
John Dickinson,
Richard Bassett,
Jaco: Broom.

MARYLAND
James McHenry,
Dan of St. Thos. Jenifer,
Danl Carroll.

VIRGINIA
John Blair,
James Madison, Jr.

NORTH CAROLINA
Wm. Blount,
Richd. Dobbs Spaight,
Hu Williamson.

SOUTH CAROLINA
J. Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA
William Fen,
Abr Baldwin.

Attest: William Jackson, *Secretary.*

ARTICLES IN ADDITION TO AND AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION

ARTICLE I. — Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II. — A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III. — No soldier shall, in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV. — The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V. — No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI. — In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII. — In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII. — Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX. — The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X. — The powers not delegated to the United States by the Con-

stitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI. — The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII. — 1. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate; — the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; — the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII. — Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV. — Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each house, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

ARTICLE XV. — Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

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